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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

Estate of LONNIE LAMONT ASHLOCK, Deceased.	
GABRIEL ASHLOCK, as Administrator, etc., Petitioner and Respondent, v. STACEY CARLSON, Objector and Appellant.	F074969 (Super. Ct. No. 445230) OPINION
Estate of LONNIE LAMONT ASHLOCK, Deceased.	
STACEY CARLSON, as Executor, etc., Petitioner and Appellant, v. GABRIEL ASHLOCK, Objector and Respondent.	(Super. Ct. No. 445304)
GABRIEL ASHLOCK, Plaintiff and Respondent, v. STACEY CARLSON, as Trustee, etc., Defendant and Appellant.	(Super. Ct. No. 445360)

APPEAL from a judgment of the Superior Court of Stanislaus County.
Timothy W. Salter, Judge.

Crabtree Schmidt and Robert W. Crabtree for Objector and Appellant, Petitioner and Appellant, and Defendant and Appellant.

Schofield & Associates, Louis F. Schofield; Freeman Firm, Thomas H. Keeling and Franklin J. Brummett for Petitioner and Respondent, Objector and Respondent, and Plaintiff and Respondent.

-ooOoo-

Lonnie Lamont Ashlock died in 2013 at the age of 63. He was survived by his father, Lawrence Ashlock (Larry), his sister, Tuteenya Graham (Teena), and his son, respondent Gabriel Ashlock (Gabriel). At the time of his death, Lonnie had a multimillion dollar real estate portfolio consisting of approximately 18 properties.¹

Lonnie executed at least two testamentary instruments during his life, a will and a trust, both of which were created in 1993. At that time, he was married to Lynn Spidell and had legally adopted Gabriel, her then eight-year-old son. The couple divorced in 1999, but Lonnie maintained a relationship with Gabriel for many years, albeit one often characterized by strain and distance.

There is evidence of Lonnie amending his will in 2001 to leave all personal property to Wilma Sue Walls (Sue), a longtime friend and business associate. She and Lonnie were romantically involved from approximately 2000 until 2005. Both versions of the will contained a pour-over provision, which devised Lonnie's real property to the 1993 trust. Although it appears Gabriel would have an interest in the real estate as a trust beneficiary, he previously alleged Lonnie died intestate and claimed to be the sole heir at law. The question of intestacy is beyond the scope of this appeal, which concerns more complex factual and legal disputes.

¹In the proceedings below and on appeal, the parties refer to themselves and others by first name. For the sake of consistency and ease of reference, we generally do the same. The decedent's first name is alternately spelled "Lonni" and "Lonnie" in the record. We use the spelling that appears on his death certificate.

At the time of his death in 2013, Lonnie was afflicted with severe dementia. He was first diagnosed with a cognitive disorder in late 2005, and his condition progressively deteriorated. Those claiming an interest in Lonnie's estate disagree about whether he possessed testamentary capacity in 2009, when he signed a completely redrafted will and allegedly amended the 1993 trust. If valid, the 2009 will and trust amendment would give appellant, Stacey Carlson (Stacey), nearly all of the assets.

Stacey is a real estate broker who began working with Lonnie in 2001. They became romantically involved around 2004. In 2005, Lonnie gave Stacey a general power of attorney limited only by a restriction against gifting property to herself. In 2009, during the period of disputed capacity, Stacey drafted a new will for Lonnie and named herself as the sole beneficiary. She also prepared an amendment to the 1993 trust, which designated her as the successor trustee. In addition, Stacey created documents purporting to show the formation of a general partnership between her and Lonnie. In 2010, she used her power of attorney to transfer ownership of several of Lonnie's properties to the supposed partnership. In 2013, she formed new trusts for Lonnie and transferred the partnership properties into them. The trusts named Stacey as trustee and, upon Lonnie's death, the sole beneficiary.

This appeal is taken from an interim judgment in a consolidated probate action. The matters at issue were litigated over the course of a 53-day bench trial. The trial court found the 2009 will and trust amendment, as well as the 2013 trusts, invalid on multiple grounds. The alleged partnership between Stacey and Lonnie was found to have never existed, and documents purporting to show otherwise were deemed forgeries. It was also determined that Stacey breached fiduciary duties and committed financial abuse of a dependent adult and was thus liable for attorney fees and statutory penalties. The trial court reserved jurisdiction on the question of damages and other issues. The unresolved matters, which included a petition to probate the 1993 will, were to be decided in future proceedings.

The claims on appeal are extensive. While most present issues of evidentiary sufficiency, some concern discretionary rulings, e.g., the admissibility of certain expert testimony. Stacey further alleges procedural error, judicial bias, and attorney misconduct. Finding no grounds for reversal, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Factual Background²

In 1992, at the age of 41, Lonnie married Lynn Spidell and became the stepfather of her three children: Devin Shaw, Nolan Shaw, and their younger half brother, Gabriel. Approximately seven months later, Lonnie adopted Gabriel. He had wanted to adopt all three boys, but the father of Devin and Nolan did not give his consent.

In 1993, Lonnie hired an attorney to prepare his estate plan, which included a will and a trust. The will bequeathed all personal property to Lynn and devised the remainder of his estate to the Ashlock Family Trust of 1993 (hereafter the 1993 trust). The trust named Lonnie and Lynn as settlors and trustees, and Devin, Nolan, and Gabriel as beneficiaries.

Lonnie and Lynn separated in 1997. Their divorce was finalized in 1999. By then, Devin was an adult and living on his own. Lonnie retained custody of Nolan and Gabriel, and he was designated as their primary caregiver. Nolan continued to live with Lonnie until he moved away to attend college. Lonnie thereafter maintained a fatherly relationship with Nolan, which included paying for his college tuition.

Gabriel resided with Lonnie during his parents' separation and after the divorce but chose to live with his mother when he was 16 years old. Nevertheless, he maintained a relationship with Lonnie into adulthood, which the trial court described as "complex and conflicted," but one with "underlying mutual love." In 2002, prior to Gabriel's 18th

²This information is primarily drawn from the interim judgment, which incorporates the trial court's statement of decision.

birthday, Lonnie wrote him a letter expressing his paternal love and a desire to support him “beyond the legal limit [of] responsibility.” However, the unspecified support was conditioned upon Gabriel working, performing adequately in school, and studying the Bible. Subsequent e-mail exchanges show Lonnie was disappointed in Gabriel’s lack of commitment to Bible study and church attendance.

Gabriel continued to make lifestyle choices of which Lonnie did not approve. Parties now adverse to Gabriel have attacked his character by highlighting prior misconduct, but those details have little relevance to the issues on appeal. However, it is relevant and undisputed that Lonnie himself was a habitual user of cocaine and methamphetamine. He was also convicted of multiple felonies in connection with his business practices.

Lonnie was a successful real estate investor. He built subdivisions and owned rental property. After his divorce, circa 2000, his closest business associates were Sue Walls, Ronald Buhler, and his father, Larry Ashlock. Buhler and Larry scouted for properties and were compensated with fractional ownership interests in those Lonnie chose to buy.

Some of Lonnie’s portfolio was held in limited liability companies. He later created “Lonni Ashlock Investments,” a name registered with the state as a partnership between him and Larry. This was allegedly done to obtain an exemption from tax withholding requirements for the sale or transfer of real property. Lonnie was the true principal, but Larry supposedly held a one percent interest in the partnership.

Sue Walls was a bookkeeper and licensed notary who worked for Lonnie from 1981 to 2010. He relied on her as a personal assistant during much of the relevant time period. According to Sue and others, she and Lonnie had a romantic relationship from 2000 until the beginning of 2005. They discussed marriage, but in the end reverted to being close friends.

In 2001, Lonnie allegedly made changes to the 1993 will. References to his “wife” were crossed out and replaced with “Nolan Roy Shaw.” However, the handwritten references to Nolan were also crossed out and replaced with “Sue Walls.” The interlineations are dated “8/6/01” and accompanied by the initials “L.A.”

In 2003, Lonnie instructed his longtime attorney, Leslie Jensen, to prepare a trust amendment and a new will. The latter instrument named Sue as the executor. It revoked the 1993 will and gave Lonnie’s personal property to “the person or persons who serve as the Trustee or successor Trustee of [the 1993 trust].” The trust amendment deleted all references to Lonnie’s former spouse, named him and Sue as settlors and trustees, and specified Nolan would be treated as his natural issue. Upon Lonnie’s death, Sue was to have plenary discretion over the distribution of trust property to Gabriel and Nolan, and certain language allowed for the possibility Gabriel might not receive anything. However, both documents were marked as drafts and never executed.

In 2004, Lonnie became romantically involved with Stacey Carlson. They had met years earlier through church, and she had been working with him since 2001. Stacey is a real estate broker, but the nature of her business relationship with Lonnie at various times is both disputed and unclear from the record. She was significantly involved in his professional affairs from 2003 onward, in part as a self-described “asset manager.” She further claims to have been “instrumental in procuring a buyer or seller” for over 75 of his real estate transactions.

Stacey has testified to having expertise “in acquiring almond orchards and managing almond orchards.” In 2004, she presented Lonnie with an opportunity to purchase a parcel of land in Merced County containing approximately 190 acres of almond trees (hereafter the Snelling Ranch). Stacey brokered the sale at a purchase price of \$1,417,500. This transaction is significant for two reasons. First, the Snelling Ranch became Lonnie’s most valuable asset. The estimated value as of 2014 was reportedly

between \$3.8 million and \$5.7 million. Second, Stacey claimed to have a 50 percent ownership interest in the property.

The Snelling Ranch purchase was an anomaly, as Lonnie's business had always focused on residential real estate. He had a talent for what is colloquially known as flipping houses. Lonnie specialized in the acquisition of foreclosure properties, which eventually led to his professional downfall.

In filings below, Gabriel described a "scheme" perpetrated by Lonnie in the mid-2000's:

"Instead of waiting for foreclosed properties to come up for competitive auction bidding on the Courthouse steps, [Lonnie] and/or a business associate would peruse the papers for foreclosure listings, and would then approach distressed homeowners promising to pay the default in arrears, in exchange for a deed to [Lonnie] and an agreement stipulating that the homeowners would pay rent to [him] for a period of time (often two years), after which point the house would be reconveyed to the original owners, with the caveat that any default in rent would result in the house vesting in [Lonnie] permanently.... While the scheme proved profitable, it also generated much ill-will and notoriety both among foreclosure auction investors (whose supply of foreclosed homes for sale dwindled) and among distressed homeowners (whose later defaults led them to lose their homes to [Lonnie]). Eventually, the schemes came to the attention of law enforcement and the District Attorney's office."

By 2005, Lonnie had an estimated net worth of \$16 million and owned more than 80 properties. In the same year, he became the target of civil lawsuits, and his home office in Waterford was raided by police. Attorney Jensen, who represented him in the civil cases and observed his mental decline, referred Lonnie to a psychologist. The psychologist referred him to Randall Epperson, Ph.D., a board certified neuropsychologist who evaluated Lonnie on November 21, 2005. Dr. Epperson's findings are detailed in our summary of the trial evidence, *post*.

On December 1, 2005, Lonnie was arrested and charged with multiple felonies. He was accused of grand theft (Pen. Code, § 487, subd. (a)), theft by false pretenses (*id.*,

§ 532, subd. (a)), and violations of the Home Equity Sales Contract Act (Civ. Code, § 1695.8). Shortly thereafter, Stacey arranged for him to enter a month-long drug rehabilitation program in Laguna Beach.

Prior to leaving for rehab, Lonnie executed a general power of attorney. The instrument designated Stacey as his attorney-in-fact, i.e., “agent.” The powers included the right to make gifts to others, but she was expressly prohibited from making gifts to herself. His father, Larry, was appointed as a substitute agent “for the sole purpose of making gifts of my property to my Agent, as appropriate.”

In 2006, Lonnie received treatment at the Amen Clinic, a facility Stacey once described as a “[b]rain trauma center in Fairfield.” The name refers to Daniel Amen, M.D., but Lonnie was seen by psychiatrist Leonti Thompson, M.D. Dr. Thompson’s initial evaluation report documents a history of nine to ten concussions. Lonnie was reportedly knocked unconscious in 2004 by a tenant during an attempted eviction. In 2003, he “turned and ran into the bucket of a backhoe ... [and] was disoriented for 6 months.” Details of the latter incident were provided by Stacey, who was quoted as saying Lonnie “‘didn’t know what planet he was on.’” Additional medical records from 2006 reflect Lonnie’s developing problems with comprehension, memory, reading, and speech. He continued to receive care at the Amen Clinic for the next two years.

In late 2007, Stacey instructed attorney Jensen to direct all correspondence regarding Lonnie’s lawsuits to her. Jensen replied, “‘Your instruction is acknowledged and declined. ... I will take my marching orders from him, not you. I hope this is clear.... Further, I will not clear communications with opposing counsel with you for prior approval. You are not co-counsel....’” The rift with Stacey impeded Jensen’s attorney/client relationship with Lonnie. Communication between them was stifled and her legal bills went unpaid. Jensen was forced to pursue arbitration to recover more than \$20,000 in outstanding fees. Stacey later arranged for Lonnie to be represented by the Borton Petrini law firm.

On November 30, 2007, Stacey was deposed in a civil case filed against Lonni Ashlock Investments. She described herself as an independent contractor who was essentially working for Lonnie “pro bono” because he had become incapable of running his business. Her assistance included property management, i.e., “collecting the rents and doing the banking and so forth[,] and just the day-to-day business of the rentals.” She continued: “And then I’m I guess what you would call the liaison between the attorneys and [Lonnie].”

In the same deposition, Stacey admitted she had looked into having Lonnie declared incompetent. To her understanding, a diagnosis of brain damage had already been made. When asked how the damage occurred, she replied, “He has suffered nine concussions. He’s been in 22 car accidents. He fell down 300 feet of a mountain on his horse in a hunting accident. He ran into a backhoe at a building site, fell out of the trailer that was behind the church when the guys removed the stairs and didn’t know it. He’s had four concussions since I’ve known him. So his brain is pretty beat up.”

By the end of 2007, Lonnie had pleaded no contest to six counts of violating the Home Equity Sales Contract Act. The plea allowed him to avoid incarceration. Pursuant to a negotiated sentence, he spent most of the following year on house arrest. However, he also made noteworthy appearances in three legal proceedings.

In January 2008, Lonnie was deposed in the case of *Foster v. Gore et al.* (Super. Ct. Stanislaus County, 2008, No. 613422). He was represented by Cornelius Callahan of the Borton Petrini law firm. When Lonnie was asked to review a document, attorney Callahan informed opposing counsel that he had suffered a brain injury and could no longer read or write. After further questioning about his condition, the deposition was suspended (and never resumed).

On June 10, 2008, Lonnie testified in the murder trial of Howard Douglas Porter, a friend and former pastor of his church. The testimony was given pursuant to Evidence Code section 402 to determine Lonnie’s competency as a witness. Although he was

found competent, the judge acknowledged his “problems with ... memory and thinking and communicating.” Lonnie’s struggles on the witness stand included sometimes forgetting what he had been asked within moments of hearing the question. He attributed his problems to “too many concussions.”

Lonnie’s third notable appearance was made at an arbitration hearing regarding attorney Jensen’s unpaid legal bills. During the proceeding, Stacey claimed to be “with” Borton Petrini, leading the panel of arbitrators to believe she was a lawyer. Jensen explained the true circumstances, and Stacey attempted to rely on her power of attorney to act on Lonnie’s behalf. The panel refused her request, which forced Lonnie to speak for himself. When questioned, he denied having a dispute with Jensen and claimed to not know why he was there. Jensen prevailed on her claim. Stacey later spearheaded an unsuccessful challenge to the ruling, and in doing so she signed under penalty of perjury declarations attributed to Lonnie and his father.

Another key event in 2008 was Stacey’s review of Lonnie’s estate plan. Attorney Jensen had been in possession of those documents, and Stacey had never seen them. By her own admission, Stacey was “upset” and “hurt” to discover she was not included in the will or trust. Lonnie had allegedly told her otherwise in the past. According to Sue Walls, the revelation infuriated Stacey and left her feeling betrayed. Sue claims Stacey was “quite adamant about having a new will done,” but Lonnie was not.

The civil and criminal proceedings took a financial toll. Most of Lonnie’s assets were illiquid and had dropped in value due to market conditions at the time. He allegedly considered bankruptcy, but Stacey was in favor of an “asset protection” plan. They consulted the Borton Petrini firm in early 2008 about creating an irrevocable trust to shield assets from judgment creditors, but counsel advised the strategy would likely fail. As found by the trial court, the next idea was to temporarily move property out of Lonnie’s name “until the pressure of the executing judgment creditors was abated.”

Instead, Stacey engaged in a course of conduct that, but for subsequent legal challenges by Gabriel, would have resulted in her obtaining permanent ownership of Lonnie's assets.

In October 2008, Stacey prepared two versions of a "Letter of Authorization." She contends Lonnie signed one of the versions, but the trial court found it to be a forgery. More specifically, it determined Stacey had "cut and pasted" Lonnie's signature from an earlier writing. This was a precursor to Stacey's creation of records purporting to show the existence of a business partnership with Lonnie.

Stacey claims the Letter of Authorization reflects certain understandings reached during a meeting between her, Sue Walls, Lonnie, and Larry. The document begins with the following statement: "[Lonnie] acknowledges that as of the day of this writing [8/24/08] he has no formal Last Will and Testament or written estate plan." According to Stacey, this language actually meant Lonnie felt his will and trust needed to be updated, and he was planning to revise them in the future.

The Letter of Authorization confirms Stacey's power of attorney and credits her with having "conducted the majority of [Lonnie's] business, legal and health affairs" since late 2005. The third paragraph states, "[Stacey] has also invested monies, generated from her own business entities[,] into the Ashlock entities." In the fourth paragraph, Lonnie "acknowledges that he does not lack the intelligence to do this work himself, but lacks the attention span and communication skills due to the ongoing Post Traumatic Syndrome and Attention Deficient Hyperactive Disorder as diagnosed by Dr. Leoniti [sic] Thompson from the Amen Clinic" Accordingly, in the fifth paragraph, Lonnie "appoints [Stacey] to research, design and implement an Asset Protection and Estate plan that will protect the remaining real estate holdings from potential future litigation and claims." Stacey is further appointed to "manage the business entities until a time comes when [Lonnie] is released from his current medical treatment and is able to conduct his own affairs once again."

On October 29, 2008, Stacey recorded a deed of trust on the Snelling Ranch, securing a promissory note in the amount of \$215,875. The deed of trust is dated January 24, 2005. Under the deed, the trustee is “Investwest Properties” and the beneficiary is “Little Hills Ltd.” Under the promissory note, the beneficiary is Stacey.

Little Hills Ltd. is a name used by Stacey for various purposes. It is not a legal entity. Stacey has characterized it as a sole proprietorship, but she was unable to show the name was ever registered with a county clerk.³

Investwest Properties is the fictitious business name associated with Stacey’s broker license since 1991. She operated the business from her personal residence in Denair. One of the primary issues in this case is whether Investwest Properties was later transformed into a general partnership between Lonnie and Stacey.

On February 1, 2009, Lonnie and Stacey allegedly entered into written partnership agreements. We say “allegedly” with regard to time and execution. The documents exist, but the trial court found Stacey created them years later and forged Lonnie’s signature on each. The first document sets forth an agreement to conduct business as equal partners under the name Investwest Properties for the purpose of “[m]anaging, buying, renovating, selling or reinvesting real estate.” The second document reflects the formation of a partnership called Little Hills Ranch for the purpose of managing the Snelling Ranch.

The third partnership document, entitled “Agreement to Consolidate Real Estate Holdings,” indicates Lonnie and Stacey merged their assets together and agreed to be equal partners in Investwest Properties and Little Hills Ranch. It further states, “Stacey Carlson will be responsible to manage, buy, sell or reinvest the asset portfolio as she sees

³Every person who regularly transacts business for profit under a fictitious business name must file and maintain a fictitious business name statement. (Bus. & Prof. Code, § 17910.) A fictitious business name cannot include the word “Limited,” or abbreviations thereof, if such use falsely implies the business is a limited liability company. (*Id.*, § 17910.5, subd. (b).)

fit in order to keep the company solvent. Lonni Ashlock, who is suffering with Post Traumatic Stress Syndrome[,] will be an inactive partner at this time.”

In June 2009, Lonnie made a court appearance in connection with Stacey’s attempt to overturn Jensen’s arbitration award. According to Jensen, the judge asked Lonnie if “he thought he could work something out” with Jensen, and Lonnie “said something to the effect [of], ‘Work out what?’” Similar to what had occurred the previous year, Lonnie claimed to not know why he was in court.

In September 2009, Stacey created another set of documents concerning Lonnie’s property and estate plan. This was allegedly done at his request because of an upcoming knee surgery. The first document, dated September 1, 2009, is an amendment to the 1993 trust. Using the 2003 draft amendment from Jensen’s files as a template, Stacey deleted the provisions naming Sue Walls as a settlor and trustee and named herself as Lonnie’s successor trustee. The amendment was purportedly signed by Lonnie and witnessed by Stacey’s future son-in-law, Jacob Mullins (Jake), and Jake’s mother, Denise Hampton.

Stacey also prepared a healthcare directive, a new will, and a “Promissory Note Modification Agreement.” The latter document purported to amend the terms of the \$215,875 note on the Snelling Ranch. It states, in pertinent part, “If the Trustor [Lonnie] becomes incompetent before the note can be paid then the note will automatically convert into a 50% ownership in the property.” The new will bequeathed Lonnie’s “entire estate” to Stacey.

Stacey arranged to have the healthcare directive, loan modification agreement, and new will notarized at the Modesto office of Borton Petrini. Although the firm was no longer representing Lonnie, attorney Callahan agreed to facilitate the notary service and also witnessed the signing of the will. The visit to Borton Petrini occurred on September 2, 2009. Lonnie underwent knee surgery the following day.

On December 11, 2009, Stacey sent the following message to an attorney who was defending Lonnie in a civil lawsuit: “‘As we spoke on the phone[,] Lonnie’s mental

health has greater deteriorated [*sic*] in this last year and he would be in no condition to testify at trial. He is undergoing treatment with little improvement.”

On June 20, 2010, Stacey contacted Ronald Buhler via text message to ask for help with Lonnie. She told him, ““He’s about one step away from having to live in an assistant care program. ... He had knee replacement surgery last year so he walks pretty good. But his mind is about like a 2-4 year old.”” During the same year, Stacey used her power of attorney to transfer ownership of Lonnie’s real estate holdings to their supposed partnership. In December 2010, she recorded at least 15 grant deeds conveying title in properties previously held in Lonnie’s name or by Lonni Ashlock Investments to “Investwest Properties, a partnership.”

By 2011, Lonnie required 24-hour care and supervision. In an e-mail to Nolan dated March 10, 2011, Stacey wrote, “Lonnie has been diagnosed by three physicians now with advanced Dementia.... [¶] I have been trying to put the timeline together on his decline[,] and the major downward spiral took place after his knee surgery in September 2009,” i.e., immediately following the signing of his new will and the agreement for her to obtain 50 percent ownership of the Snelling Ranch.

In December 2011, Lonnie was transferred to an assisted living facility. He resided there for approximately one year. In late 2012, he returned to his Waterford residence and received in-home care.

In April 2013, Stacey consulted with attorney Vernon Gant about Lonnie’s estate and strategies for rectifying an alleged “imbalance in the capital accounts” of their partnership. She later created four trusts: the Carlson Family 2013 Trust and the Ashlock Family 2013 Trusts A, B, and C. Stacey funded these trusts using grant deeds, which were recorded in July and August 2013.

The Ashlock Family 2013 Trust A was funded with “an undivided on[e] half interest” in the Snelling Ranch through a deed from “LONNI L. ASHLOCK, an unmarried man,” signed by Stacey as his attorney-in-fact. The remaining one-half

interest was deeded into the Carlson Family 2013 Trust. Stacey is the settlor and trustee of the Carlson Family 2013 Trust. The successor trustees and beneficiaries are her children, Shawn and Ashleigh Monaghan.

Stacey named herself trustee of the Ashlock Family 2013 Trust A and Lonnie a lifetime beneficiary. Upon his death, the trust assets were to be distributed “entirely to STACEY CARLSON.” The document further states, “I [Lonnie Ashlock] have one adopted child, namely GABRIEL T. ASHLOCK. I intentionally fail to provide for that child in this instrument, which child shall be treated for all purposes as if he predeceased me, without issue.” Thus, upon Lonnie’s death, Stacey would have obtained 100 percent ownership of the Snelling Ranch. Upon Stacey’s death, the beneficiaries of Lonnie’s 2013 “A” trust would have been her children, Shawn and Ashleigh, and a “loyal coworker” named Robert Reyes.

The Ashlock Family 2013 Trust B was funded in part with Lonnie’s personal residence in Waterford and another property in Merced, both of which were deeded into it by Lonnie as trustee of the 1993 trust (via Stacey acting under power of attorney). A third property was similarly deeded by Tiger Creek Homes, LLC, an entity of which Lonnie was the sole member. Additional deeds were executed by “Investwest Properties, a partnership,” purporting to convey into the “B” trust “an undivided 1/2 interest” in 14 other properties. The remaining interest in those properties was deeded to the Carlson Family 2013 Trust. The settlors, trustees and beneficiaries of Lonnie’s 2013 “B” trust were the same as those in the “A” trust, with the exception of Robert Reyes. In other words, Stacey again stood to receive 100 percent of the trust assets.

It is unclear how, or if, the 2013 “C” trust was funded. The instrument includes a schedule of assets listing three properties, but the recorded grant deeds show those properties were actually transferred into the “B” trust. At trial, Stacey testified all properties in the “C” trust had been sold. Regardless, the “C” trust mirrored the “B” trust in terms of settlor, trustees, and beneficiaries.

Lonnie died on October 11, 2013. His death certificate identifies the cause as “frontotemporal dementia.” The death certificate also references a seizure disorder.

Procedural History and Trial Evidence

On October 24, 2013, Gabriel filed a petition for letters of administration in Stanislaus Superior Court case No. 445230. He declared his father died intestate and sought to be appointed administrator of the estate. The petition was granted, and letters of administration were issued on December 5, 2013.

On December 20, 2013, Stacey filed a petition to probate the 2009 will in Stanislaus Superior Court case No. 445304. In January 2014, Gabriel filed an opposition to Stacey’s petition, which he later amended. The 2009 will was challenged on multiple grounds, including lack of testamentary capacity and statutory presumptions of fraud and undue influence. We collectively refer to Stacey’s petition, Gabriel’s amended opposition, and all issues encompassed therein as the “will contest.”

In February 2014, Gabriel filed a petition to determine the validity of the 2013 trusts in Stanislaus Superior Court case No. 445360. The petition asserted multiple claims against Stacey, including breach of fiduciary duty and financial abuse of an elder or dependent adult. Gabriel also requested “full and complete accountings” of the trust assets and of Stacey’s actions under her power of attorney from 2005 onward.

Our use of the terms “trust petition” and “trust issues” shall encompass all matters associated with Gabriel’s petition to invalidate the 2013 trusts, including the legitimacy of the alleged partnerships between Lonnie and Stacey. Elsewhere in the opinion, we address and reject Stacey’s argument that the partnership issues were outside the scope of the pleadings and should not have been litigated. The same is true of orders by the trial court requiring her to produce various accountings. Background on the so-called “accounting issues” is provided in our Discussion, *post*.

In April 2014, Lonnie’s sister, Teena, filed a petition for suspension of powers and removal of Gabriel as the estate administrator. Teena acted through attorney Ronald

Sarhad, who was representing Stacey in a separate lawsuit filed against her by Sue Walls. Although Teena and Larry Ashlock questioned Stacey's actions during Lonnie's final years, they both sided with her in the probate litigation. Stacey paid their legal bills (and some of Larry's living expenses), and her trial and appellate counsel, Robert Crabtree, began representing Teena and Larry midway through trial.

All matters concerning Lonnie's estate were consolidated under case No. 445230. Trial was supposed to proceed in phases, going in the order of (1) trust issues, (2) the will contest, (3) the petition for suspension of powers and removal, and (4) damages and remedies. Efforts to segregate the trust issues from the will contest proved futile as witnesses were called out of order and testimony covered both aspects of the case. There were other diversions as Stacey's accountings were repeatedly found inadequate and further accountings were ordered.

Trial commenced on November 13, 2014, and continued through February 20, 2015, with 23 days of testimony. On day 23, the trial court found the 2013 trusts invalid and ordered briefing on the ramifications of its finding, including how the underlying transactions should be unwound. A written tentative decision was issued approximately four months later.

The tentative ruling found (1) the 2013 trusts were invalid and (2) the alleged partnerships between Lonnie and Stacey never existed. However, a motion by Stacey to reopen evidence on the trust issues was contemporaneously granted. Stacey then attempted to disqualify the trial judge, which resulted in a writ action and further delays. Trial resumed on September 15, 2015, and continued through October 14, 2015 (day 40), at which point the parties submitted their cases on the trust petition and will contest. Thirteen additional days were devoted to accounting issues.

On July 28, 2016, the trial court issued a second tentative decision. A proposed statement of decision and interim judgment followed, as did written objections by Stacey.

On October 19, 2016, the trial court issued a 74-page statement of decision. The interim judgment was filed on October 25, 2016.

To better frame the issues, we summarize trial evidence on the trust petition and the will contest under separate headings. A synopsis of the parties' legal theories is provided to contextualize the evidence. An additional section is devoted to Stacey's attempt to disqualify the trial judge, which is done to cast her judicial bias claim in a proper light.

Evidence re: Trust Issues

Gabriel argued the 2013 trusts were invalid under Probate Code sections 4264 and 21380.⁴ Section 4264 provides that an attorney-in-fact may not create, modify, or revoke a trust unless such acts are expressly authorized in the power of attorney. (*Id.*, subd. (a).) Section 21380 establishes a presumption of fraud or undue influence whenever an instrument provides for a donative transfer to the person who drafted or transcribed it. (*Id.*, subd. (a)(1), (2).) As to the drafter, the presumption is conclusive and irrebuttable. (*Id.*, subd. (c); *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128, 1137.) The statute also provides for the recovery of attorney fees. (§ 21380, subd. (d).)

To establish the applicability of section 4264, Gabriel relied on the written power of attorney executed by Lonnie in 2005. The instrument prohibited Stacey from making gifts to herself and did not authorize the creation of new trusts. To establish the applicability of section 21380, Gabriel relied on the trust documents and testimony by Stacey and attorney Vernon Gant. Gant testified to providing Stacey with sample trust forms, but he repeatedly denied drafting the 2013 trusts or formulating the material terms therein. Stacey refused to characterize herself as the drafter, but she admitted using Gant's templates to create the trusts.

⁴Unless otherwise specified, all further statutory references are to the Probate Code.

Gabriel anticipated Stacey would try to invoke an exception to section 21380 that exists for a “cohabitant of the transferor.” (§ 21382.) In this context, cohabitation is defined as “two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship.” (§ 21364; Pen. Code, § 13700, subd. (b).) Relevant factors include “(1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as spouses, (5) the continuity of the relationship, and (6) the length of the relationship.” (Pen. Code, § 13700, subd. (b).)

According to Stacey’s trial testimony, she considered herself married to Lonnie after they began having sexual relations in 2004. However, on October 2, 2010, she sent the following text message to Ronald Buhler: “I’m actually more content being single than I ever have been. I don’t even want to look.” This statement was made in the context of discussing how Sue Walls had “reconnected with a high school boyfriend.”

Gabriel’s attorneys questioned witnesses about Lonnie’s and Stacey’s relationship in 2013, focusing on their living arrangements and the possibility of physical intimacy. Attorney Gant said Stacey described Lonnie as being in a “vegetative state” in April 2013, approximately three months before the trusts were executed. Stacey admitted she and Lonnie did not live together in 2013 (although she stayed with him a few nights when paid caregivers were unavailable) and confirmed he was “not capable of maintaining a sexual relationship.” Additional evidence showed they had lived apart for several years prior to his death.

To prove financial abuse of a dependent adult, Gabriel needed to show Stacey had taken or appropriated Lonnie’s property “for a wrongful use or with intent to defraud,” or by means of undue influence. (Welf. & Inst. Code, § 15610.30, subd. (a)(1), (3).) Gabriel also sought to recover exemplary damages and attorney fees under sections 859 and 4231.5, which required evidence Stacey had acted in bad faith. As an affirmative defense, Stacey claimed reliance on the advice of counsel. She further claimed to have

acted as Lonnie's equity partner in Investwest Properties. Pursuant to the partnership theory, she argued any invalidation of the 2013 trusts would result in most of the property reverting to her (as the surviving partner) rather than to the estate.

Nanette Barto, a forensic document examiner, testified regarding the authenticity of various records. She opined Lonnie's signature on the Letter of Authorization had been "cut and pasted" from trial exhibit 284, which was a sheet of paper containing 12 variations of his signature. Stacey testified exhibit 284 was created by Lonnie in the early 2000's as a reference document to help her sign things on his behalf. She denied the cut-and-paste allegations.

Barto further opined someone other than Lonnie had signed the Investwest Properties and Little Hills Ranch partnership agreements, as well as the Agreement to Consolidate Real Estate Holdings. Stacey's counsel argued these opinions were inadmissible because Barto did not disclose them in her deposition. We address the admissibility issue in our Discussion, *post*.

Stacey and her father, Robert Carlson, testified about the evolution of Investwest Properties. The name was originally associated with a trust. In 1991, Stacey filed a fictitious business name statement in Stanislaus County indicating she and her parents were using the name for a "real estate marketing" business. The preprinted form shows someone initially checked a box indicating the business was being conducted by "a Business Trust." This was scratched out at some point and an "X" was placed in the box next to "Co-Partners." Stacey described herself as the "boss," since her father had worked under her as an agent, but she also claimed her parents were 50 percent owners of the "partnership." At no time did Stacey ever file a statement of partnership authority with the Secretary of State. (See Corp. Code, § 16303.)

Robert Carlson corroborated Stacey's testimony and discussed retiring from Investwest Properties around 1996. In February 2009, he allegedly witnessed Lonnie sign the partnership agreements with Stacey. He claimed to have sold his 50 percent

stake in Investwest Properties to Lonnie for one dollar in January 2010. However, Robert Carlson's credibility was impeached when he was shown to have given untrue testimony about an unrelated document. Despite being confronted with proof of the misstatements, he refused to change his testimony.

Stacey's partnership contentions were refuted by the testimony of Ronald Koftinow, CPA. Koftinow had known Stacey and her family since childhood, and he had been her accountant since approximately 1986. After being introduced to Lonnie through Stacey, Koftinow prepared Lonnie's tax returns for the years 2006–2013.⁵ Lonnie's mental health declined over this period, and Koftinow relied on Stacey to provide the essential documents and information.

Koftinow testified to having no knowledge of Investwest Properties being a partnership—either between Stacey and her parents or between her and Lonnie. He understood Investwest Properties to be solely owned by her, and she had never informed him of any partnerships with Lonnie. Accordingly, no partnership returns were ever filed. When preparing their individual tax returns, he treated Lonnie's properties as being solely owned by him, including the Snelling Ranch. This was done pursuant to information provided by Stacey.

First Tentative Decision and Disqualification Proceedings

There was a consensus among the parties that the 2013 trusts were invalid. However, Stacey refused to formally concede the issue. At the conclusion of her opening statement, Gabriel moved for a judgment regarding the validity of the trusts. His counsel purported to rely on Code of Civil Procedure section 631.8, which is not applicable until the opposing party has completed its "presentation of evidence." (*Id.*, subd. (a).) The trial court deferred its ruling.

⁵Based on testimony given in a subsequent accounting proceeding, it appears Koftinow also prepared Lonnie's tax return for the year 2005.

On day 23 of trial, Gabriel rested his case on the trust petition. Stacey did not wish to submit the matter, claiming she intended to call Larry Ashlock as her final witness. Her counsel declined to make an offer of proof regarding the anticipated testimony. This prompted a renewed effort by Gabriel to obtain a ruling under Code of Civil Procedure section 631.8. Amid further discussion, Stacey's attorney said, "We agree the trust is invalid."

Stacey's counsel reasoned that because the trusts were void *ab initio*, it was as if they had never existed. Therefore, he argued, section 21380 was not applicable. By implication, counsel claimed section 4264 should be given priority of analysis over section 21380, even though the trusts would be invalid as a matter of law under both statutes. The stated rationale was that because the 2013 trusts never existed, they could not be characterized as donative instruments. No mention was made of the fact section 21380 contains an attorney fees provision and section 4264 does not.

Gabriel's counsel reiterated the motion: "[W]hat we're asking is that the trust[s] be declared invalid and that the properties be reconveyed into the estate." The trial court issued an oral ruling, finding the 2013 trusts invalid, and requested further argument on "what should be done with the assets that were placed in those three trusts and perhaps the other half that went into [Stacey's] trust.... [¶] ... [¶] ... We can't just leave them hanging in limbo."

The parties' oral arguments covered a wide range of topics. Gabriel's counsel methodically explained how section 21380 applied to the trusts and why the cohabitation exception could not be established. Stacey's counsel argued invalidation of the 2013 trusts meant "the vast majority" of the assets reverted to Investwest Properties and should remain under Stacey's control, yet he claimed the validity of the alleged partnerships was not at issue. Stacey's counsel also made a contingent motion to reopen evidence on the trust petition.

The trial court requested briefing in lieu of oral rebuttal. The parties were told, “following receiving those briefs, I will issue my written decision just on this narrow issue of the trusts and what orders I feel we need to make before we proceed with the rest of the case.” Stacey filed an 11-page brief and attached exhibits. She conceded the 2013 trusts were void under section 4264 and repeated her arguments regarding the mootness of section 21380. She also reiterated her position on the partnerships and sought to retain control over the trust assets. Her exhibits included a proposed order to have 14 of the 18 properties revert to “Investwest Properties, a partnership.”

Following a lengthy hiatus, the trial court issued its “Tentative Decision on Trust Issues.” The 2013 trusts were found void *ab initio* under sections 4264 and 21380, and the court determined Lonnie and Stacey were not cohabitants when the trusts were created. The deeds used to fund the trusts were also found void *ab initio*. Invalidity of the deeds and trusts raised questions of title. The tentative decision states, “In deciding whether title to the various Ashlock properties should be allowed to vest in Investwest Properties, the Court must address the threshold issue of whether Investwest Properties was a legitimate partnership between [Stacey] and [Lonnie].”

The alleged partnerships were found nonexistent for multiple reasons. The testimony of Barto and Koftinow was credited and cited as highly probative. Although it believed the partnership documents had been forged, the trial court alternatively found that even if Lonnie had signed them, they would be invalid due to his “cognitive impairment” and Stacey’s exertion of undue influence. Conclusions regarding Lonnie’s cognitive abilities were based on the opinions of medical experts who had already testified.

The tentative decision concludes with a blunt assessment of the evidence: “There could scarcely be a more profound change in [Lonnie]’s property rights. Acting in a secretive manner, [Stacey] transferred all of [Lonnie]’s real property into the ‘partnerships,’ which she controlled, and from there into the 2013 Trusts, which she

controlled. [Stacey] also took control of [Lonnie]’s personal property [¶] The end result of [Stacey]’s actions demonstrate inequity at its worst. [Lonnie] went from enjoying millionaire status to dying in isolation, having lost control to all of his assets.”

On the final page of the tentative decision, Stacey’s motion to reopen evidence on the trust issues was granted. In light of its partnership analysis, the trial court ordered the appointment of a special administrator pending resolution of the case. Stacey was ordered to provide a further accounting of “all activities/transactions taken pursuant to the ‘partnerships.’”

Stacey’s counsel, Robert Crabtree, filed a declaration to disqualify the trial judge for lack of impartiality under Code of Civil Procedure section 170.3. Crabtree first accused the judge of intentionally filing the tentative decision while he was on vacation, insinuating this was done to prevent Stacey from lodging timely objections. Next, counsel complained of the analysis regarding Lonnie’s cognitive abilities, alleging it constituted a premature determination of facts equally relevant to the will contest. The central allegation, however, was the judge had “improperly expanded the pleadings to encompass an evaluation of several partnership agreements” Most of Crabtree’s grievances rested on the supposed impropriety of determining whether the partnerships were valid. As further evidence of bias and prejudgment, he noted the tentative decision was issued despite a pending motion by Stacey to designate a rebuttal expert.⁶

The trial judge issued a response, which denied certain allegations and offered perspective on the main issue:

“I initially addressed the subject of the trusts, and the fact that they were invalid. However, then the issue which I felt I then needed to address, was what was to be done with the property that had been placed into the

⁶Gabriel’s forensic document examiner, Nanette Barto, testified in February 2015. Nearly four months later, on June 3, 2015, Crabtree moved to augment Stacey’s expert witness list and designate a rebuttal expert. The trial court’s tentative decision was filed on June 11, 2015. The motion to augment was later denied as untimely.

trusts. Mr. Crabtree asserted that I should simply order the properties back to the partnerships. However, I had serious concerns about whether the partnerships were valid. I used only a limited amount of testimony from Ms. Barto that applied to the so-called partnership agreements, and the memorandum that preceded them. [¶] There was a substantial amount of evidence which strongly suggested both that [Lonnie] never signed the ‘agreements’ and could not have understood them in any event. Was I supposed to ignore that evidence?

“As a judge, in addition to trying to be fair and impartial, I am assigned the responsibility, in probate and decedent’s estate cases, to conserve and protect the estate of the decedent. Here, I had genuine concerns that [Lonnie]’s estate was being disposed of without his authorization or even his knowledge, and I felt I had a responsibility to whoever is entitled to it, to take steps to protect and preserve it.”

Notwithstanding the above comments, the judge consented to disqualifying himself: “While I have not reached any conclusions that [Stacey] has committed perjury, I have reached conclusions pertaining to undue influence and forgery, conclusions contained in my Tentative Decision, that would probably cause a person aware of the facts to reasonably entertain doubt that I would be able to be impartial in future proceedings in this matter....”

In July 2015, this court found the trial court’s rationale contravened Code of Civil Procedure section 170.2. (E.g., *id.*, subd. (b) [“It shall not be grounds for disqualification that the judge [¶] ... [¶] ... expressed a view on a legal or factual issue presented in the proceeding”].) An alternative writ issued, and the matter was assigned to the Honorable Charles D. Wachob of the Placer Superior Court. Judge Wachob denied Stacey’s challenge.

Stacey separately requested a voluntary recusal pursuant to Code of Civil Procedure section 170.1, subdivision (a)(6). The request was denied. Next, attorney Crabtree filed a petition on behalf of Larry Ashlock to probate the 1993 will and have Larry appointed as the executor. On the same date, Crabtree moved to disqualify the trial judge pursuant to Code of Civil Procedure section 170.6. This apparent attempt to

circumvent the earlier disqualification rulings was unsuccessful, and the 1993 will petition was consolidated with the current case.

Evidence re: Will Contest

Gabriel argued the 2009 will was invalid under former section 21350, the predecessor statute to section 21380, which applies to donative instruments executed prior to 2011. (*Jenkins v. Teegarden, supra*, 230 Cal.App.4th at pp. 1137-1138.) As under the current law, any instrument that made a donative transfer to the person who drafted it, or to a fiduciary who transcribed it, was presumed invalid. (*Id.* at p. 1135.) The presumption did not apply to a blood relative, spouse, or cohabitant of the transferor. (*Ibid.*, citing former § 21351.)

Stacey testified to creating the 2009 will pursuant to Lonnie's instructions. She had purchased a "blank will form" from the Internet and typed in the material provisions. The document reads, in pertinent part:

"My heirs consist of the person whom I have trusted with my Power of Attorney.... [¶] ... [¶] I give my entire estate to ... Stacey Carlson.... [¶] I designate the beneficiary to provide for the people that have contributed substantially to my life and to my estate in a way that she deem's [*sic*] suitable. [¶] I also designate the above to use the income from the net assets in a generous, yet prudent way, to the furthering of the Kingdom of God in which enabled me to live the generous life that I have lived."

Because Stacey had prepared Lonnie's will, the cohabitation issue was of critical importance. According to her, "they basically lived their life as a married couple from at least 2004 to Lonnie's death in 2013." Testimony from Lonnie's father and Stacey's family members confirmed the existence of a romantic relationship from late 2004 through 2007. Stacey testified to living with Lonnie during most of 2006. In April 2007, they vacationed in Mexico and purchased a timeshare together.

Lonnie was under house arrest from approximately December 2007 through July 2008. He signed a "Cohabitation Agreement" with the sheriff's office, which permitted Stacey to reside with him at his Waterford home. Although Stacey frequently visited

Lonnie during this period, she apparently continued to reside at her home in Denair. This was indicated by the testimony of her father, Robert Carlson, who also lived on her property. Regarding the time period of 2007 to 2013, Stacey conceded, “I don’t think it would be fair to say that we ever occupied a joint residence. We went back and forth between the two residences,” i.e., spending nights together at each other’s respective homes.

Stacey’s cohabitation evidence was probative of the years 2004–2007, and, to a lesser extent, 2008. Evidence suggesting a continuing romantic relationship with Lonnie in 2009 primarily consisted of her own testimony. As discussed, the disputed will was signed in September 2009. Lonnie underwent knee surgery the next day. He recuperated at Stacey’s home for a brief period of time, but they reportedly slept in different areas of the house.

Nolan Shaw, Sue Walls, Leslie Jensen, Ronald Buhler, and Gabriel provided refutative testimony regarding the cohabitation defense. Sue recalled Stacey telling her in 2006 that she was having a “sexual affair” with Lonnie. Sue was at Lonnie’s house “almost every day” and knew Stacey kept some personal items there during the summer of 2006. By 2009, however, she only knew of Stacey and Lonnie being close friends. They were not living together when the will was drafted and signed. In 2010, Sue was Lonnie’s primary caregiver and spent the night with him on a regular basis. This was acknowledged by Stacey in a text message to Ronald Buhler: “He stays with her at night and goes home for a few hours everyday [*sic*].”

As an alternative ground for invalidating the will, Gabriel argued lack of testamentary capacity. He also alleged Lonnie lacked capacity to execute the 2009 trust amendment and the Snelling Ranch “Promissory Note Modification Agreement.” There was competing testimony from lay witnesses regarding Lonnie’s mental competency. However, the expert witness testimony supported Gabriel’s position. Although Stacey

designated neuropsychologist Robert A. Allen, Ph.D., as a rebuttal expert, Dr. Allen did not testify at trial.

Dr. Epperson, the neuropsychologist who evaluated Lonnie in late 2005, testified to his findings. Lonnie had undergone standardized tests designed to assess his cognitive abilities. Stacey and Sue attended the appointment and provided additional background information. Among other conclusions, Dr. Epperson found Lonnie had “severe memory problems” and exhibited signs of “impaired frontal lobe functioning.”

Dr. Epperson’s diagnostic impression in 2005 was a “cognitive disorder” as classified by code 294.9 under Axis I of the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, 4th ed.). This indicated a nonspecified “organic brain-based pathology.” Lonnie’s symptoms were characteristic of frontotemporal dementia, which was later found to be the cause of his death. Dementia had not been part of Dr. Epperson’s diagnosis, but it “certainly was in the differential.” He explained: “I couldn’t say offhand if it was frontotemporal dementia at that time or a stroke at that time. It looked like it was pervasive, involving several parts of the brain. It was probably progressive according to the history, but there was no clear-cut diagnosis. It wasn’t clearly Alzheimer’s, [and] wasn’t clearly Parkinson’s.”

The 2005 evaluation noted Lonnie’s problems with auditory comprehension. He could understand “very simple material,” but when Dr. Epperson “read him short passages and then asked him questions, he was at the 4.9 grade level.... [¶] So if someone were trying to explain a concept to him or explain, for example, what is in a power of attorney, it would be like explaining it to a fourth grade student.”

Four years later, in November 2009, Lonnie began seeing a speech pathologist. Dr. Epperson reviewed and relied upon the speech pathology report, which documented significant auditory comprehension problems. He explained: “[I]t indicates a progression to the point where, four years after I saw him, his—he’s only understanding one and a half out of ten items that he’s presented auditorily. [¶] So if someone

explained, for example, a legal document verbally, he would understand only a fraction of it. ... So that would be consistent with a progressive dementia”

Dr. Epperson also reviewed and relied upon Lonnie’s medical records from the Amen Clinic and other facilities. These records confirmed the progressive nature of his dementia: “He was much worse when he was seen by the Amen Clinic the year after I saw him; much worse when the speech therapist saw him” The deterioration of Lonnie’s signature over time was another indicator of dementia. Dr. Epperson thus found the signature on the 2009 will to be significant: “[H]e doesn’t even get it on the line. It’s a very distorted signature. If we just saw that, not knowing anything about the case, we would say this person probably is either illiterate or demented.”

Dr. Epperson opined Lonnie did not have the mental capacity to understand the 2009 will. The same conclusion was reached by a second expert, Bennet Omalu, M.D. Dr. Omalu is an extensively credentialed pathologist who is famous for discovering a disease known as chronic traumatic encephalopathy (CTE). Actor Will Smith portrayed Dr. Omalu in a 2015 Columbia Pictures film, *Concussion*.

As explained by Dr. Omalu, CTE is a form of dementia caused by repeated head trauma and concussions. Formerly known as dementia pugilistica, it was once thought to be suffered exclusively by boxers. Dr. Omalu’s research purportedly demonstrated that anyone who experiences concussive brain injuries can develop CTE. His work gained public attention after he autopsied former professional football players, including Junior Seau and Mike Webster, and found they had been afflicted with the disease.

Based on Lonnie’s history of concussions, and taking into account other information contained in his medical records, Dr. Omalu opined Lonnie had developed CTE by 2004. Lonnie’s abuse of cocaine and methamphetamine likely exacerbated his condition. Given these factors and Dr. Epperson’s first-hand observations, Dr. Omalu believed Lonnie “was suffering from dementia by 2005 and was already at the advanced stages of dementia.”

Dr. Omalu explained how dementia can manifest itself in “a specific pattern of deteriorative handwriting and also a specific pattern of deterioration in speech.” With regard to the 2009 will, he noted Lonnie’s signature was “not on the document line. It’s almost like scribbled.” He continued: “This is a very complex document. It has complex ramifications and consequences. In 2009, September, my opinion is [he] did not have sufficient cognitive capacity to either understand the content of this document[,] [or] the cognitive capacity to analyze it [and] comprehend the ramifications, the consequences.” In response to a follow-up question, Dr. Omalu opined Lonnie also lacked capacity to understand the nature of his property.

Although she had previously acknowledged Lonnie’s concussions, Stacey testified to believing he lied about those events to cover up the extent of his drug abuse. The source of her information was Lonnie’s “family,” i.e., Larry Ashlock and Teena Graham. Larry testified to hearing Lonnie admit he fabricated the story about falling down a mountain on a hunting trip. The backhoe incident and his fall from a church trailer were also characterized as lies or embellishments. Larry knew of only one concussion, which had resulted from Lonnie falling off of a horse.

Jake Mullins and his mother, Denise Hampton, testified to witnessing Lonnie sign the amendment to his 1993 trust on September 1, 2009. On that date, Jake was engaged to Stacey’s daughter and living at Stacey’s residence in Denair. Both witnesses described Lonnie as being lucid and cognizant of his actions. He allegedly expressed the desire to exclude Gabriel from his estate plan.

Stacey further relied on the testimony of attorney Callahan and Terryl Gomez. Gomez is a paralegal and notary public who worked at the Borton Petrini law firm. She testified to the authenticity of her signatures as a notary and witness on the disputed will, the Promissory Note Modification Agreement, and a two-page healthcare directive. Apart from seeing Lonnie sign these documents, she had no material recollection of the events.

On direct examination by Stacey's counsel, Callahan verified the authenticity of his signatures as a witness to the will and healthcare directive. He did not witness the signing of the Promissory Note Modification Agreement. Additional information was elicited on cross-examination.

Stacey had contacted Callahan to request the services of a notary. He obliged, enlisting Gomez for the task, but apparently did not know he would be asked to witness the signatures until Stacey and Lonnie arrived at his office on September 2, 2009. The events transpired within a matter of two to three minutes. Callahan only saw Lonnie sign the last page of the will; he did not see Lonnie read it, nor did he read it himself, and he did not witness anyone explain the document to Lonnie.

On September 3, 2009, Lonnie underwent knee surgery. His preoperative medical records document the following incident:

“PT [patient] admitted in preop accompanied by caretaker [i.e., Stacey]. PT joking around on admission but seem[ed] to be confused, not able to [follow] simple commands or tell [the nurse] what kind of surgery or [which] knee [he's] going to have surgery on. Caretaker has power of attorney but left in the car, was asked to get power of attorney. When caretaker returned, PT seem[ed] to gain his composure, [he's] able to point [to which] knee [he's] going to have surgery on, able to carry conversation and [follow] simple commands. Power of attorney was filed in the chart but PT signed consents himself. Dr. Foglar in and talked to PT.” (Original capitalization omitted.)

The surgeon, Christian Foglar, M.D., did not observe the described episode of confusion. He had little independent recollection of interacting with Lonnie, but testified he would not have performed the surgery if he had doubts regarding Lonnie's ability to give informed consent. Postoperatively, Lonnie exhibited confusion and agitation to the point where hospital security was summoned “to prevent [him] from hitting staff.” He was subdued with Haldol, which Dr. Foglar described as “a medication that is used for confusion or psychotic events.”

Pertinent Findings and Conclusions

The trial court made findings regarding the veracity of Stacey's testimony, highlighting eight incidents "that reflect badly on her credibility." The list of examples included suspicious financial activity during trial: "STACEY withdrew \$350,000 from an [account associated with the Snelling Ranch] approximately two weeks after the Court had issued its initial Tentative Ruling, in which it appointed a Special Administrator. She then deposited the \$350,000 into a minor's account [the son of Jake Mullins], before withdrawing it again, having some large cashier checks issued in her name. She was trying to hide the money. She did not disclose it until after [Gabriel's forensic accountant] testified he couldn't trace the missing \$350,000." Stacey later claimed "she was entitled to the money because of past profits of her Denair almond ranch."⁷ Her entitlement to the money was an issue reserved for future phases of the case.

As mentioned, Robert Carlson gave untrue testimony about a document. This damaged his credibility in the court's eyes, and it disbelieved his testimony about witnessing Lonnie sign the partnership agreements. The testimony of Jake Mullins and Denise Hampton was found "suspect" and "untrustworthy," and was thus "disregarded by the Court." The court also doubted the credibility of a witness named David Chovanak, who had testified in detail to Lonnie's soundness of mind on a particular day in June 2009.

The 2013 trusts were found invalid under sections 4264 and 21380. However, the trial court ruled the instruments were voidable rather than void *ab initio*, which differed from its analysis in the first tentative decision. Stacey was found to have drafted the trusts, and the court determined she and Lonnie were not cohabitants in 2013.

⁷Stacey has an almond ranch at her residence in Denair. She previously comingled funds from the Denair ranch with those generated by the Snelling Ranch. Stacey maintains the comingling of funds supports her position regarding shared ownership of the Snelling Ranch and the alleged Little Hills Ranch partnership with Lonnie.

Consequently, she was held liable for attorney fees under section 21380, subdivision (d). A constructive trust was imposed on the subject properties.

The alleged partnerships were found to have never existed. The trial court was especially persuaded by the testimony of Stacey's accountant, Ronald Koftinow, which it described as "some of the most important evidence in the case." Consistent with the opinions of Nanette Barto, the three partnership agreements and preceding Letter of Authorization were deemed forgeries. In addition, Lonnie was found to have lacked the mental capacity to enter into contracts by "approximately the middle of 2008," i.e., at least six months prior to when the partnership agreements were allegedly signed.

Stacey's behavior in connection with the 2013 trusts was found to constitute financial abuse of a dependent adult and a breach of her fiduciary duties as Lonnie's attorney-in-fact. The financial abuse finding was limited to actions concerning assets transferred out of the 1993 trust and into the 2013 trusts. The trial court concluded the required taking of Lonnie's other properties occurred "in early 2009," when Stacey "transferred most of [them] into the 'partnerships,'" and it found Lonnie was not a dependent adult at that time.⁸

The findings of financial abuse and breach of fiduciary duty meant Stacey was liable for exemplary damages and attorney fees under sections 859, 4231.5, subdivision (c), and Welfare and Institutions Code section 15657.5, subdivision (a). Stacey's advice-of-counsel defense was rejected for lack of good faith. In other words, the advice upon

⁸The trial court was mistaken as to when the transfers of title occurred. Although Stacey claimed she and Lonnie signed the partnership agreements in early 2009, she did not deed the real estate into the name of Investwest Properties until late 2010. According to her records, she consulted with an attorney named Richard Sinclair on October 6, 2010, about using her power of attorney to "transfer the properties out of Lonni's name into Investwest Properties" She then proceeded to draft, execute, and record the deeds in November and December of that year. Since neither party raised the issue below or on appeal, we do not reach the question of whether this finding, which was in Stacey's favor, was erroneous.

which she allegedly relied had been given based on her false information about the partnerships.

Stacey was found to have drafted the 2009 will. The trial court also determined she and Lonnie were not cohabitants during the relevant time period. Therefore, the will was conclusively presumed invalid under former section 21350. As an alternative basis for invalidating the will, the trial court found (1) Lonnie lacked testamentary capacity and (2) it was the product of undue influence exerted by Stacey.

The 2009 amendment of the 1993 trust was invalidated on three grounds. The trial court disbelieved the testimony of all purported witnesses to its execution and concluded Lonnie did not actually sign the document. Alternatively, insofar as the signature may have been genuine, there was a lack of testamentary capacity. Stacey was also found to have “exerted undue influence in the creation and execution of the Amendment.”

The Promissory Note Modification Agreement concerning the Snelling Ranch was found devoid of consideration. The agreement was also found invalid because Lonnie “lacked the capacity to understand and knowingly enter into contracts at the time of its execution.” In the alternative, it was held invalid because Stacey “exerted undue influence in the creation and execution of the agreement.”

Stacey was surcharged \$365,152.92 for wrongful use of proceeds from the Snelling Ranch. The surcharge was based on these facts: “Following [Lonnie’s] death, Stacey paid out of the Snelling Ranch income, the sum of \$358,223.60 to attorneys Robert Crabtree and Ronald Sarhad, for services rendered on behalf of [her], Lawrence Ashlock and Teenya Graham. She also paid from the Snelling Ranch income, the sum of \$6,929.32 for insurance payments and PG&E bills for Lawrence Ashlock.” Although not included in the surcharge, she was also found to have “paid out large amounts” to “others who are affiliated with [her] or her extended family.”

The trial court rejected Stacey’s attempt to rely on an indemnity agreement that she and Lonnie signed in 2001. The court believed Stacey altered the document to make

it appear broader in scope than originally intended. The agreement was found to have “had no legal force and effect in 2013 and thereafter.”

DISCUSSION

I. Any Error in Finding the 2013 Trusts Voidable Rather than Void Was Harmless

Stacey concedes the 2013 trusts were invalid under section 4264 because her power of attorney did not authorize their creation. She does not address the trial court’s findings under section 21380. Therefore, any challenges to those findings have been waived. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.)

The parties and the trial court had long viewed the trusts as being void *ab initio*, but the interim judgment concludes they were voidable. The distinction involves a question of law, and such issues are reviewed de novo. (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 575.) Stacey identifies the correct standard of review, but she contends her claim requires interpretation of a statute, namely section 4264. In point of fact, there is no dispute over the statute’s meaning. The subtext, as she implied below, is section 4264 has priority of analysis over section 21380. No authority is cited for this proposition, and we reject it. The trusts are equally invalid, as a matter of law, under both statutes.

The term “void *ab initio*” means invalid from the outset. (Black’s Law Dict. (9th ed. 2009) p. 1709, col. 2.) “Unlike a voidable transaction, a void one cannot be ratified or validated by the parties to it even if they so desire.” (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 936.) In finding the 2013 trusts voidable, the trial court relied on *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175 (*Costa Serena*). The *Costa Serena* case arose from a dispute over amendments to the covenants, conditions, and restrictions of a housing

development, which a lower court erroneously found void *ab initio* rather than voidable. (*Id.* at pp. 1186–1194.)

Stacey argues *Costa Serena* is inapposite and cites cases supporting the conclusion the trusts were void *ab initio*. (E.g., *Estate of Huston* (1997) 51 Cal.App.4th 1721, 1726 [attorney-in-fact’s transfer of decedent’s annuity to himself found void for exceeding the scope of his authority].) In that regard, her arguments are compelling. However, assuming she is correct, the error was harmless.

Although she characterizes the issue as “extremely important” and calls the alleged error “extremely prejudicial,” Stacey’s appellate briefs do not offer a theory of prejudice. To understand her reasoning, one must closely examine the pretrial and posttrial briefing, which is embedded in the 4,622-page Appellant’s Opening Appendix. It is not our burden to “scour the appellate record” in an effort to make sense of a party’s position. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1270; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) However, because we find her argument so unworthy of credence, we choose to acknowledge and expressly reject it.

In many contexts, void documents are treated as if they never existed. (E.g., *LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co.* (2007) 156 Cal.App.4th 1259, 1266 (*LA Sound*) [“When [an insurance] policy is void *ab initio*, it is ‘as though it had never existed’”].) The distinction between a void or voidable instrument can be significant when determining contractual rights and title to property. “For example, ‘a forged document is void *ab initio* and constitutes a nullity; as such it cannot provide the basis for a superior title as against the original grantor.’ [Citation.] ‘An instrument that is void *ab initio* is comparable to a blank piece of paper and so necessarily derives no validity from the mere fact that it is recorded.’” (*OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1331–1332.) As another example, litigants cannot

avoid court proceedings by invoking an arbitration clause in a contract that was void *ab initio*. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 416.)

Stacey contends the above principles shield her from liability in connection with the 2013 trusts. As best we understand her position, a void *ab initio* finding means the trusts never existed and her actions in attempting to create and fund them “never happened.” Therefore, according to Stacey, all claims for damages, statutory penalties, and attorney fees are “moot.” In her words, “If it never happened, then the finding with regard to California Probate Code Section 859 and Welfare and Institutions Code Section 15610.30 likewise could not be sustained.”

The invalidity of an instrument *ab initio* does not mean all actions taken in relation thereto are treated as having never occurred. For example, an insurance policy obtained by making material false statements on the application for coverage is void *ab initio*, but courts do not pretend the fraudulent behavior never happened or ignore consequential expenditures by the insurer and putative policy holder. (*LA Sound, supra*, 156 Cal.App.4th at pp. 1266–1271.) The would-be insured is “liable for the misrepresentations on the application” (*id.*, at pp. 1268) but may also be entitled to a refund of premiums paid on the legally nonexistent policy. (*Imperial Casualty & Indemnity Co. v. Sogomonian* (1988) 198 Cal.App.3d 169, 184.) By finding the policy void *ab initio*, the court effectively rescinds the policy and restores the parties to their former positions. (*LA Sound, supra*, at p. 1267; *Imperial Casualty, supra*, at p. 184.) Such a finding cannot be made without acknowledgement and consideration of the underlying conduct.

Stacey’s arguments are illogical, promote inequitable results, and are unsupported by any cited authority. The 2013 trusts may have been void *ab initio*, but that does not magically alter the course of history. The fact remains she drafted and executed instruments providing for donative transfers to herself (see § 21380, subds. (a)(1), (c), (d)) and engaged in behavior found to constitute a breach of her fiduciary duties and

financial abuse of a dependent adult. Therefore, we conclude the alleged error in finding the trusts voidable was harmless under any standard of prejudice. (Cf. *In re Marriage of Seaton* (2011) 200 Cal.App.4th 800, 809 [“the idea that a void marriage never existed is a legal fiction that should be used only where it promotes substantial justice between the parties”].)

Gabriel argues harmless error pursuant to the theory Stacey was a trustee *de son tort*. In other words, “‘A person who, without legal authority, administers a living person’s property to the detriment of the property owner.’” (*King v. Johnston* (2009) 178 Cal.App.4th 1488, 1505, fn. 16.) In light of the foregoing analysis, we express no opinion on the merits of Gabriel’s argument.

II. Sufficiency of the Evidence

A. Standard of Review

“When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.” (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) Put differently, substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (*Edison Co. v. Labor Board* (1938) 305 U.S. 197, 229.) The testimony of a single witness may alone constitute substantial evidence. (Evid. Code, § 411; *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

“In general, in reviewing a judgment based upon a statement of decision following a bench trial, ‘any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]’ ... We may not reweigh the evidence and are bound by the trial court’s

credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment.” (*Estate of Young* (2008) 160 Cal.App.4th 62, 75–76.)

B. Partnership Findings

Preliminarily, we address Stacey’s contentions regarding the propriety of litigating the partnership issues. “The issues in a lawsuit are, aside from those added by a pretrial order, either those framed by the pleadings or as expanded at trial.” (*Marvin v. Marvin* (1981) 122 Cal.App.3d 871, 875; see 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 2, p. 29 [trials involve “the determination of some issue of fact or law either raised by, or directly connected with, the pleadings”].) For the following reasons, the existence of the alleged partnerships was an issue encompassed by the pleadings and placed in dispute by Stacey’s defenses.

The trust petition alleges all property transferred into the 2013 trusts, including Stacey’s own family trust, belonged to Lonnie. Stacey was alleged to have engaged in “a pattern of conduct aimed at gaining control of [Lonnie’s] major assets” and to have conferred an “undue benefit” upon herself. By pleading financial abuse of a dependent adult, Gabriel raised the question of whether Lonnie’s property was appropriated “for a wrongful use or with intent to defraud, or both.” (Welf. & Inst. Code, § 15610.30, subd. (a)(1).) The petition requested “all trusts created by [Stacey] in 2013 be terminated, and that all assets therein be combined and turned over to [the estate].”

By claiming the trusts were funded with jointly owned partnership property, Stacey effectively asserted an affirmative defense. The defense related to allegations of undue benefit, breach of fiduciary duty, financial abuse, and the question of bad faith (which arose in part from a prayer for damages under § 859). She further invoked the partnership defense in opposition to 14 of the 18 properties being returned to the estate after the trusts were invalidated.

The validity of the partnerships was also a necessary component of Stacey's advice-of-counsel defense. The record does not contain her answer to the trust petition, but she argued the defense was raised by virtue of her general denial. She claimed to have deeded Lonnie's real estate into the name of Investwest Properties based on advice from attorney Richard Sinclair, and to have created and funded the 2013 trusts based on advice from attorney Vernon Gant. Gant generally testified to predicated his advice upon her representations about the partnerships, including the Agreement To Consolidate Real Estate Holdings. An advice-of-counsel defense requires truthful disclosure of all relevant facts to the attorney (*Bisno v. Douglas Emmett Realty Fund* 1988 (2009) 174 Cal.App.4th 1534, 1544), which means Stacey put the legitimacy of the partnerships at issue herself.

Turning to the evidence, a partnership is the association of two or more people to operate a business for profit as co-owners. (Corp. Code, § 16202, subd. (a).) "Generally, a partnership connotes co-ownership in partnership property, with a sharing in the profits and losses of a continuing business." (*Chambers v. Kay* (2002) 29 Cal.4th 142, 151.) The dispositive inquiry is not the parties' intent to form a partnership, but their intent to carry on an enterprise as co-owners, as shown by "their agreement[s], conduct, and the surrounding circumstances." (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 454.)

The existence of a partnership is a question of fact. (*Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1157.) The trial court found the alleged partnerships "were a sham." To reiterate the standard of review, "the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*" [Citation.] All conflicts, therefore, must be resolved in favor of the respondent." (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925–926.)

According to Stacey, the evidence showed she and Lonnie were business partners "for over a decade." Her deposition testimony of November 30, 2007, tells a different story. These excerpts are self-explanatory:

“A. ... I’m an independent contractor. And I— [¶] Because of [Lonnie]’s health problems, I came onboard a few years ago basically just to help out. And it’s turned into an all-consuming position. [¶] I manage the properties that he has, with collecting the rents and doing the banking and so forth and just the day-to-day business of the rentals.... [¶] ... [¶]

“Q. ... So [managing Lonnie’s properties is] what you’re using your real estate license for this year; correct?

“A. If you want to put it that way, I guess that would be correct.

“Q. How would you put it differently? How am I wrong?

“A. I’m not being paid. So it’s kind of hard. I guess I could say I’m doing it pro bono with my real estate license.

“Q. Why are you doing it pro bono?

“A. Because I could not morally abandon this man right now even though it’s very tempting to.

“Q. Why?

“A. Because I know he’s not capable of doing it himself.

“Q. Isn’t he capable of paying you?

“A. Yes. If I asked to be paid, I’m sure he would pay me.

“Q. Why haven’t you asked to be paid?

“A. Because I don’t need the money. That’s why. And when I do, I’ll go to him and I’ll be paid. [¶] ... [¶]

“Q. Any other clients where you sold their property and didn’t get paid for doing so?

“A. Yes.

“Q. When was that?

“A. I have carried several notes back with no interest for several years.

“Q. Do you have a note from Lonni on your work for this year?

“A. No. I might by the end of the year.

“Q. And what would you ask to get paid for your efforts for Lonni this year?

“A. I have no clue, [counsel]. That’s why it’s not been discussed.”

Less than a year after the quoted testimony was given, Stacey and Lonnie allegedly signed the Letter of Authorization, which indicates Stacey “invested monies, generated from her own business entities into the Ashlock entities.” The forensic document examiner, Nanette Barto, opined Lonnie’s signature was cut and pasted from a preexisting record, trial exhibit 284. Barto’s testimony is substantial evidence of the Letter of Authorization being a forgery. Having viewed both documents, we believe a trier of fact could have reached this conclusion without the aid of expert testimony. Even to an untrained eye, the signature on the Letter of Authorization appears identical to the second-to-last one on the bottom right side of exhibit 284. Barto’s testimony helps explain why a tiny fragment of the signature on exhibit 284 is missing from the forged document (basically, the lowest portion had to be cut off to avoid also reproducing part of the original signature line), and she noted it is virtually impossible for someone to sign their name “exactly the same way twice.”

There were two versions of the Letter of Authorization. The version without Lonnie’s signature contained two extra sentences: “... A breakdown of the funds invested is attached to this document. [¶] ... [¶] ... This plan will include the repayment of [Stacey’s] funds in the form of cash, equities, stock, or a combination of all three methods to be implemented no later than January 1, 2009.” The trial court observed this language weighed against a partnership finding, hence the forging of Lonnie’s signature on the version referencing only Stacey’s purported investment of money into the real estate holdings she was managing.

Stacey contends she and Lonnie formed an entity called Rock Solid Assets, LLC, in 2003 “as a holding entity for their investments.” The available documentation

identifies Lonnie as the entity's "sole member" and shows he entered into a related "Management Agreement" with Stacey. In her deposition of November 30, 2007, Stacey testified the company (1) had been solely owned by Lonnie, (2) was now defunct, and (3) any properties previously held in its name were owned by Lonnie and/or Ronald Buhler.

Although Stacey contributed her commissions toward Lonnie's down payment on the Snelling Ranch, her deed of trust and promissory note indicate those contributions were merely a loan. This conclusion is bolstered by the testimony of their accountant, Ronald Koftinow. Stacey's reliance on evidence supporting a different conclusion is unavailing. "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.)

The partnership contracts, i.e., the Agreement To Consolidate Real Estate Holdings and those pertaining to Investwest Properties and Little Hills Ranch, were found to have been signed by someone other than Lonnie. The trial court relied on the expert opinions of Barto and its credibility determinations regarding the purported witnesses to those contracts, Stacey and Robert Carlson. Stacey argues a partnership agreement need not be in writing, which is true. (Corp. Code, § 16101, subd. (10).) However, evidence of records being fabricated to reflect such an agreement is probative of the conclusion no partnerships existed.

The trial court further relied on the testimony of Koftinow, who had treated the parties' real property as being separately owned pursuant to Stacey's representations. Given the totality of the circumstances, the accountant's testimony was sufficient to support the partnership findings even in the absence of Barto's forgery opinions. With that being said, we address Stacey's main argument, which concerns Barto's testimony on cross-examination. The argument is convoluted, but we understand it and are unpersuaded.

Copies of the Agreement to Consolidate Real Estate Holdings were marked as trial exhibits 13, 368, and 441-5. During Barto's testimony, the document was sometimes referred to as "Q-21." To avoid confusion, we will use the designation Ex. 13. On cross-examination, Barto was asked about an entirely different record, exhibit 16, also referred to as "Q-25" (hereafter Ex. 16), which is an agreement between Lonnie and Sue Walls concerning Sue's retirement benefits. Unlike Ex. 13, the agreement between Lonnie and Sue was purportedly notarized by a third party.

Barto opined Lonnie "probably did not" sign Ex. 13 or Ex. 16. Attorney Crabtree questioned her about a "note" he had seen that read, "Stacey Carlson claims that Sue Walls signed" Lonnie's name on Ex. 16. Barto confirmed she was told this by Gabriel's counsel, William Broderick-Villa.⁹ Next, Crabtree asked Barto to compare Ex. 16 with Ex. 13 and asked her if the signatures appeared similar. She agreed they were similar. In response to a follow-up question, Barto opined Ex. 13 and Ex. 16 were signed by the same person.

To be clear, Barto did not express any opinions regarding who, if not Lonnie, had signed Ex. 13 and Ex. 16. She merely opined Lonnie did not sign either document and agreed the disputed signatures were probably made by the same person. In its statement of decision, the trial court accepted as true Barto's opinions regarding the key partnership documents but "sided with the notar[ies]" on all notarized records. By implication, this means the trial court found Lonnie did sign Ex. 16. Stacey thus contends the trial court was compelled to also find Lonnie signed Ex. 13.

Stacey's argument is erroneously premised on the notion Barto's opinion regarding Ex. 13 was "based solely" upon attorney Broderick-Villa's misinformation about Ex. 16. In actuality, Barto compared the signature on Ex. 13 to those made by

⁹The record neither confirms nor disproves this allegation, but for purposes of our discussion we will assume it is true. Stacey later acknowledged giving such testimony in relation to a different retirement agreement between Lonnie and Sue, but not as to Ex. 16.

Lonnie during the same general time period and noted several discrepancies: “It is much more smoother. And execution looks like it’s relatively free from [the] awkward tremors that we have been witnessing in the 2008 signatures. [¶] The relation to the baseline is, again, contradictory[,] as we discussed in another one of the signatures that I opined was not [Lonnie]’s. And that’s that relation of the L, or the bottom loop of the L, being written below the baseline. And I found that throughout four of the signatures that were executed into 2009” Likewise, Barto’s opinions regarding Ex. 16 were based on her own analysis, not simply a representation made by Broderick-Villa.

“The trier of fact is the sole arbiter” of the weight and interpretation of the evidence, and “is not required to accept the opinion testimony of any witness” (*South Bay Irr. Dist. v. California-American Water Co.* (1976) 61 Cal.App.3d 944, 965.) The trial court was free to credit some of Barto’s opinions and disregard others. (*Wells Fargo Bank v. Dowd* (1956) 139 Cal.App.2d 561, 573; accord, *People v. Langley* (1974) 41 Cal.App.3d 339, 348 [“the trier of fact may reject a part of the testimony of a witness while believing other portions of his testimony”].) Several of Barto’s conclusions were rejected, not just her opinion as to Ex. 16. For each opinion it accepted, the court noted “there was separate, corroborating evidence.” Sue Walls, who was familiar with Lonnie’s writing, opined the signatures on Ex. 13 and the other two partnership agreements were not made by him.

In any event, whether Lonnie signed Ex. 13 is not dispositive of the ultimate issue. The trial court impliedly found the authenticity of his signature did not matter given the evidence of his diminished cognitive abilities. Above all else, it “relied heavily” on the testimony of Lonnie’s and Stacey’s accountant, which we have found sufficient in light of the record as a whole. For the reasons discussed, the partnership findings are supported by substantial evidence.

C. Financial Abuse of a Dependent Adult

Financial abuse occurs when a person “[t]akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.” (Welf. & Inst. Code, § 15610.30, subd. (a)(1).) A “wrongful use” is found if the person knew or should have known his or her conduct was likely to be harmful to the victim. (*Id.*, subd. (b).) The parties do not dispute Lonnie’s status as a dependent adult. The issue is whether Stacey’s attempt to create and fund the 2013 trusts constituted a wrongful taking or appropriation of Lonnie’s property.

A person “takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of *any property right*, including by means of an agreement, *donative transfer*, or *testamentary bequest*, regardless of whether the property is held directly or by a representative of an elder or dependent adult.” (Welf. & Inst. Code, § 15610.30, subd. (c), italics added.) This language is broadly construed. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 478–482.) “[T]he phrases ‘donative transfer’ and ‘testamentary bequest’ refer not only to consummated transfers, but also to prospective transfers.” (*Id.* at p. 481.) If the defendant’s actions infringe upon the right to dispose of property, a wrongful taking can occur even if the victim retains title to the property. (*Id.* at pp. 480–482.)

Stacey contends no wrongful taking occurred because Lonnie was a lifetime beneficiary of the 2013 trusts. Her argument conveniently ignores the fact she named herself as the successor beneficiary of those trusts. We thus conclude her actions constituted a wrongful taking or appropriation within the meaning of Welfare and Institutions Code section 15610.30. Her attempt to rely on the 2009 will fails, as it was correctly found void under former section 21350 (see further discussion, *post*). Because she drafted the trusts, the instruments are statutorily presumed “to be the product of fraud

or undue influence,” thus confirming the tortious nature of her behavior.¹⁰ (§ 21380, subd. (a)(1).)

D. Section 859

Section 859 provides for the remedy of double damages. It applies to a party who “has in bad faith wrongfully taken, concealed, or disposed of property belonging to ... a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith *or through the commission of elder or dependent adult financial abuse*” (Italics added.) Such persons are “liable for twice the value of the property recovered” in an action on the taking, concealment, or disposal, and “may, in the court’s discretion, be liable for reasonable attorney’s fees and costs.”

Stacey challenges the section 859 finding for insufficient evidence of bad faith. We need not address the specifics of her argument. As explained in *Kerley v. Weber* (2018) 27 Cal.App.5th 1187, the statute identifies “three different categories of conduct that can support double damages,” one of which is financial abuse of a dependent adult. (*Id.* at pp. 1197–1198.) Therefore, the trial court was authorized to impose liability based on its finding of financial abuse; “no separate finding of bad faith was necessary.” (*Id.* at p. 1198.) Because there is substantial evidence of financial abuse, the claim regarding section 859 necessarily fails.

E. Advice-of-Counsel Defense

Stacey contends the trial court erred by rejecting her advice-of-counsel defense. The claim is made with regard to the findings of financial abuse and liability under section 859. We find no error.

¹⁰The trial court concluded there was no undue influence because Lonnie was oblivious to Stacey’s actions. However, based on its findings under section 21380, subdivision (a)(1), there is an implied finding of fraud. On a closely related issue, the trial court expressly found fraud “in the setting up of the ‘partnerships.’”

Reliance on the advice of counsel is a defense traditionally reserved for malicious prosecution actions and insurance bad faith litigation. In these contexts, a party may avoid liability by demonstrating “[g]ood faith reliance on the advice of counsel, after truthful disclosure of all the relevant facts.” (*Bisno v. Douglas Emmett Realty Fund* 1988, *supra*, 174 Cal.App.4th at p. 1544.) “However, if the initiator acts in bad faith or withholds from counsel facts he knew or should have known would defeat a cause of action otherwise appearing from the information supplied, that defense fails.” (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 53–54.)

The trial court found Stacey’s actions vis-à-vis the alleged partnerships were fraudulent, including the forging of Lonnie’s signature on various documents. Attorney Gant testified to believing the Letter of Authorization gave Stacey the right to make decisions regarding Lonnie’s estate plan. We have already found substantial evidence that Stacey “cut and pasted” Lonnie’s signature onto that document. This is only one example supporting the trial court’s conclusion Stacey did not truthfully disclose all relevant facts to her attorney. Given our extensive discussion of the partnership findings and the 2013 trusts, the sufficiency of the evidence is manifest. Her criticism of the trial court’s analysis as “circular reasoning” is not convincing.

F. 2009 Will

Former section 21350 governs the validity of the 2009 will. (*Jenkins v. Teegarden, supra*, 230 Cal.App.4th at pp. 1137–1138.) The law states, “(a) Except as provided in [former] Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following: [¶] (1) The person who drafted the instrument. [¶] ... [¶] (4) Any person who has a fiduciary relationship with the transferor ... [and] transcribes the instrument or causes it to be transcribed.” (Stats. 2003, ch. 444, § 1; see *Estate of Clementi* (2008) 166 Cal.App.4th 375, 380.)

The presumption of invalidity is conclusive as to donative transfers benefiting the person who drafted the instrument (assuming it was not reviewed by an independent attorney who counseled the transferor about its consequences). (Former § 21351, subds. (b), (d), (e)(1) [Stats. 2002, ch. 412, § 1]; *Rice v. Clark* (2002) 28 Cal.4th 89, 97; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 318, fn. 11.) Stacey admitted to preparing the will, including the material provisions designating her as the sole beneficiary of Lonnie's estate. Her admissions support the finding that she drafted the will. (See *Estate of Swetmann* (2000) 85 Cal.App.4th 807, 819–820 [distinguishing between drafting an instrument and merely transcribing it or causing it to be transcribed].)

Stacey claims to have acted pursuant to Lonnie's instructions, describing herself as an amanuensis and not the drafter. Her argument is fallacious. "[T]he 'amanuensis rule' ... provides that where the signing of a grantor's name is done with the grantor's express authority, the person signing the grantor's name is not deemed an agent but is instead regarded as a mere instrument or amanuensis of the grantor, and that signature is deemed to be that of the grantor." (*Estate of Stephens* (2002) 28 Cal.4th 665, 670–671.)

The amanuensis rule applies to the execution of legal documents, and even when applicable, "the signing of a grantor's name by an interested amanuensis must be presumed invalid." (*Estate of Stephens, supra*, 28 Cal.4th at pp. 677–678.) The presumption is sometimes rebuttable, but not when the supposed amanuensis is the beneficiary of a donative instrument he or she drafted. "When the amanuensis theory is offered in a situation where the donative transfer *is* prohibited under [former] section 21350, ... the statutory scheme controls." (*Id.* at p. 677, fn. 6.) Therefore, because Stacey drafted the will, it is invalid as a matter of law absent proof of an exception under former section 21351.

This brings us to the issue of cohabitation. Former section 21350 does not apply to a blood relative, spouse, or cohabitant of the transferor. (Former § 21351, subd. (a).) The term "'cohabitant' has the meaning set forth in section 13700 of the Penal Code."

(*Ibid.*; see *Bernard v. Foley* (2006) 39 Cal.4th 794, 811, fn. 12.) As previously stated, cohabitation “means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship.” (Pen. Code, § 13700, subd. (b).) Relevant factors include “(1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as spouses, (5) the continuity of the relationship, and (6) the length of the relationship.” (*Ibid.*)

The trial court found Lonnie and Stacey were not cohabitants when the will was prepared in September 2009. This factual finding is reviewed for substantial evidence. Stacey’s argument for de novo review is meritless.

As a practical matter, the cohabitation finding hinged on Stacey’s credibility. However, she demonstrated a willingness to lie under oath about this very issue. In her deposition on November 30, 2007, she testified to beginning her romantic relationship with Lonnie in 2006. She was asked a follow-up question: “And so before that time, it was just a business relationship?” She replied, “Yes.” She denied being Lonnie’s wife or fiancée and expressed a preference for the term “significant other.” In the trial below, Stacey testified to commencing her sexual relationship with Lonnie on October 9, 2004, and considering herself married to him from that day forward. She obviously gave false testimony in one of the proceedings.

There was evidence of a sexual relationship between 2004 and 2007. This was mostly based on Stacey’s testimony, but Sue Walls confirmed her knowledge of a “sexual affair” in 2006. Sue also attested to her understanding that Lonnie and Stacey had gone back to being friends by 2009. Regardless of whether the sexual relationship continued past 2006, there was little evidence of them “sharing the same living quarters” during the critical time period.

Stacey claimed to have lived with Lonnie for nearly all of 2006, but Sue testified she never moved in at all. Between 2007 and 2009, they likely spent some nights at each

other's homes. However, Lonnie was on house arrest for most of 2008, and Robert Carlson's testimony arguably suggested Stacey was sleeping at her own residence on a regular basis. Stacey also made an interesting remark while testifying about Lonnie's daily routine, albeit without specific reference to dates: "He went to bed at 8:00 [p.m.], and I usually got a call from him every morning at 4:30." We view the testimony in the light most favorable to the judgment.

The trial court noted Stacey's interrogatory responses from 2014 indicated she had resided at her Denair ranch for the past five years, supporting the conclusion she and Lonnie lived apart in 2009. Nolan Shaw testified to having no knowledge of Lonnie living with another woman after his divorce from Lynn Spidell. Ronald Buhler testified to having no knowledge of Stacey ever cohabitating with Lonnie. The same was true of attorney Jensen, whose testimony regarding the 2006–2007 time period included these statements: "[Lonnie] told me that Stacey was trying to take control. He told me that she was keeping secrets from him. He told me that, once the criminal proceedings were resolved, he needed to figure out a way to get her out of his life."

Stacey complains of the trial court's observation, "[T]hey never continually lived together under the same roof." We are aware of at least one case in which a cohabitation finding was made despite one of the parties maintaining a separate apartment. (*People v. Ballard* (1988) 203 Cal.App.3d 311, 314.) This does not mean exclusively living together "under the same roof" is not a valid consideration. The question is not whether it was possible to find in Stacey's favor, but whether the record supports the adverse determination. "If a ruling is supported by substantial evidence, it is irrelevant that the record also includes substantial evidence that would have supported a different conclusion." (*Shelden v. Marin County Employees' Retirement Assn.* (2010) 189 Cal.App.4th 458, 464.)

There is conflicting evidence on the other factors, which must be construed in favor of the judgment. We will further address one of those factors, i.e., "whether the

parties [held] themselves out as spouses.” (Pen. Code, § 13700, subd. (b).) Those involved in Lonnie’s and Stacey’s lives were under no illusions about their marital status.

In an e-mail to Nolan dated March 10, 2011, Stacey wrote, in reference to Lonnie, “You might find this strange, but I have actually thought of the two of us getting married. It would correct a wrong done in the sight of God for our premature romantic relationship, and it would ensure that Lonni will have a loving family to take care of him until he departs. Of course this idea was met with negativity by a few, but the decision is ultimately between Lonni and myself.” Regarding the last sentence, we note Stacey had told Ronald Buhler several months earlier (1) she was single and (2) Lonnie’s “mind is about like a 2–4 year old.”

Stacey’s comment about it seeming strange for her to consider marrying Lonnie presumably alluded to his dementia, which she referenced in the same e-mail. This is supported by Robert Carlson’s testimony: “The topic came up between my daughter and I. She said, ‘I couldn’t marry Lonni.’ [¶] ... [¶] ... In his present condition, she felt it wouldn’t be proper.”

The prospect of Stacey marrying Lonnie in his demented state caused tension between her and Sue Walls. A text message from Stacey to Sue in February 2011 offers insight into Stacey’s motives: “I believe that God will either open this door or close it. My heart still leads me in the direction that this protects Lonni now *and those of us in his life who really care about him later.*” (Italics added.) Sue said, “I consider you a friend Stacey, and as long as you have done everything correctly, and Lonni’s will is in place then you should have nothing to fear from anyone.”

Lonnie’s medical records from a consultation with Dr. Foglar on August 10, 2009, refer to Stacey as his “coach.” At trial, the doctor testified, “[C]oach’ wasn’t something that I came up with.... I mean, I assume, based on my documentation, that’s how they presented it.” Records from Lonnie’s hospital stay immediately following the signing of

the will indicate he lived “alone” and variously refer to Stacey as his “caregiver,” “caretaker,” “friend,” “church friend,” and “supportive friend.”

Facing an insurmountable standard of review, Stacey contends the trial court improperly relied on the Bible. The claim could be viewed as disingenuous. Stacey is an overtly religious person who invoked her faith throughout trial. For example, when discussing tax evidence contrary to her partnership defense, she made a distinction between “the secular world” and “God’s economy.” She insisted the act of having sex with Lonnie in 2004 meant they had “consummated a biblical definition of marriage.” She likewise claimed they were “married in the eyes of God.”

In posttrial briefing, Stacey argued she was the “natural beneficiary” of Lonnie’s estate because they “had been in a committed cohabitant relationship which was a marriage in the eyes of God and lacked only a civil marriage ceremony.” To account for any implied spousal exemption argument, the trial court refuted Stacey’s scriptural interpretations and said, “Jesus certainly seemed to know the difference between marriage and a sexual relationship.” The discussion spans less than one page of the 74-page statement of decision. The court’s remarks concerned the issue of marriage, not cohabitation, and we find no error.

In summary, the 2009 will is conclusively presumed invalid under former section 21350. Substantial evidence supports the finding Stacey was not exempt from the presumption as a spouse or cohabitant under former section 21351. It is unnecessary to address the trial court’s alternative grounds for invalidating the will.

G. 2009 Trust Amendment

Although Stacey drafted the 2009 amendment to the 1993 trust, she named herself the successor trustee, not a settlor or beneficiary. For this reason, we assume former section 21350 is not applicable. The circumstance of a drafter being the sole trustee of a

trust is grounds for the trustee's removal under section 15642, subdivision (b)(6), but that issue was not litigated.

The trial court invalidated the 2009 trust amendment on three grounds, and we affirm on the finding Lonnie did not sign the document. The trial court relied on circumstantial evidence, but such evidence "can provide the sole basis for a verdict" and "can meet the substantial evidence test on appeal." (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1110.) "Moreover, [a trier of fact] is entitled to accept persuasive circumstantial evidence even where contradicted by direct testimony." (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 548, overruled on an unrelated point in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574; accord, *Scott v. Burke* (1952) 39 Cal.2d 388, 398 ["Circumstantial evidence may outweigh, in convincing force, both the strongest of disputable presumptions ... and direct evidence as well"].)

Stacey allegedly prepared four documents within an approximate 24-hour time period: the disputed will, the trust amendment, the Promissory Note Modification Agreement, and a healthcare directive. Three of those items were taken to law offices of Borton Petrini on September 2, 2009, to be witnessed and notarized. Lonnie ostensibly chose to not have the trust amendment notarized with the other batch of documents. Jake Mullins and Denise Hamilton testified to witnessing him sign the trust amendment at Stacey's ranch in Denair on September 1, 2009.

The trial court questioned why Lonnie would have segregated the trust amendment from the other contemporaneously prepared records. The proffered explanation was he and Stacey had asked Jake and Denise to serve as witnesses for that particular instrument. However, in scrutinizing the testimony of Jake and Denise, the court noted "both differed dramatically on when they were contacted to be a witness." The court also considered their ties to Stacey. Jake was engaged to Stacey's daughter and lived on her ranch in Denair. "Both worked for Stacey. [Denise's] daughter was also employed by [Stacey]." Stacey does not dispute these points on appeal.

The statement of decision reads:

“... Frankly, the Court distrusts the testimony of Denise Hampton and Jake Mullins. The Court watched them carefully as they testified. The Court had a strong sense that they were being untruthful. In addition to that, there are questions concerning the 1993 Trust amendment and the 2009 Will. Why was this trust amendment not taken to the offices of Borton and Petrini, along with the other documents executed the next day, and notarized? There is no reason why this document would not have been signed and notarized on September 2nd, if it had been in existence. Also, if STACEY was the ‘natural beneficiary of LONNI’s estate’ as argued by her attorney, why would LONNI not include her as a beneficiary in the 1993 Trust? That makes no sense either.

“There does not appear to be any legitimate activity of STACEY as a trustee of the 1993 Trust, before the death of LONNI. STACEY purportedly signed a Deed in November, 2010, as Successor Trustee (Ex. 631); however, Ex. 631 makes no reference to a purported 2009 Trust Amendment, and no recorded Affidavit of Successor Trustee was introduced into evidence, showing recordation on the same date. Also, the Deed lists Lynn Ashlock as a grantor, and there is no Affidavit of Successor Trustee, signed by Ms. Ashlock (Spidell). Finally, if STACEY really were a Successor Trustee of the 1993 Trust in 2013, why didn’t she sign the 2 Deeds transferring property into the 2013 Trusts as Successor Trustee? Instead, she signed as power of attorney for Lonni.

“Add to the above the propensity for STACEY signing LONNI’s signature to various documents ..., there is, in the Court’s mind, a strong possibility that STACEY signed LONNI’s name to the amendment. The Court finds that it is more likely than not, that STACEY did sign LONNI’s name to the amendment, and the Court is finding that Denise Hampton and Jake Mullins did not witness LONNI signing the amendment. The Court therefore considers the amendment to be invalid.”

Deferring as we must to the trial court’s observations and credibility determinations, we conclude its invalidation of the trust amendment must be affirmed. All reasonable inferences are indulged to uphold the judgment whenever possible. (*Goodman v. Zimmerman* (1994) 25 Cal.App.4th 1667, 1678.) A trier of fact may reject even the uncontradicted testimony of a witness so long as the rejection is not arbitrary. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890; *Goehring v. Chapman*

University (2004) 121 Cal.App.4th 353, 368.) “[W]here uncontradicted testimony has been rejected by the trial court, it ‘cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved.’ [Citation.] That is not the case here.” (*Adoption of Arthur M.* (2007) 149 Cal.App.4th 704, 717.)

H. Promissory Note Modification Agreement

The Promissory Note Modification Agreement for the Snelling Ranch was found invalid on grounds of undue influence and lack of mental capacity. We conclude the finding is supported by substantial evidence. A brief factual overview precedes our analysis.

The Snelling Ranch was partitioned from a nearly 800-acre plot of land. Stacey spent several years attempting to market the property to clients before Lonnie agreed to purchase a 268-acre parcel that included 190 acres of almond trees. She brokered the sale of additional parcels to other buyers, which generated commissions used toward Lonnie’s down payment. This simplified summary explains the figure of \$215,875 on her deed of trust and promissory note.

In January 2005, Lonnie purchased the Snelling Ranch for \$1,417,500. He obtained financing from Yosemite Farm Credit, ACA. The record shows a first deed of trust to an apparent subsidiary, Yosemite Land Bank, FLCA, in the amount of \$1,044,000. The escrow documents reflect a credit to the buyer of \$70,875, representing a 5 percent commission owed to Investwest Properties, i.e., Stacey, thus showing she did contribute money toward the purchase price. However, the property was titled in the name of “Lonni L. Ashlock, a single man.”

There was much controversy at trial regarding the legitimacy of Stacey’s deed of trust and promissory note. She claimed to have been a co-owner of the Snelling Ranch from the date of purchase. The deed and note were allegedly created as a “backup”

position to protect her because Lonnie's pending lawsuits precluded him from transferring title into her name. The deed was not recorded until October 29, 2008, nearly four years after the land was purchased, and unusual circumstances surrounded the document itself. The promissory note did not surface until the middle of trial, after Stacey "found it" in her personal files.

The trial court ultimately found the deed and note were genuine, but it rejected Stacey's claim of partial ownership. This determination is supported by the record, including the testimony of Stacey's and Lonnie's accountant, Koftinow, who explained the Snelling Ranch had always been represented to be, and treated as, solely owned by Lonnie. The statement of decision highlights other supporting evidence:

"There is no reference in the offer and purchase agreement or in any of the escrow papers that STACEY would be a principal in the transaction and receive any interest in the ranch [citation]. There was no promissory note nor deed of trust in the escrow file [citation] in favor of STACEY and/or her business entity nor in any of the financing of the purchase with Yosemite Farm Credit [citation] nor in the escrow documentation nor the deed. The ONLY buyer ever identified in escrow documents was LONNI [citation]. The Grant Deed conveyed the [Snelling Ranch] to 'Lonni L. Ashlock, a single man.'"

The Promissory Note Modification Agreement drafted by Stacey and signed by Lonnie at Borton Petrini on September 2, 2009, contains the following provisions under part B.2:

"a. Trustor and Beneficiary both acknowledge that there have been no principal or interest payments on the original Note and that the current principal and interest balance is \$493,164.76.

"b. The interest rate [is increased from 5.75% to 6.5%] annually.

"c. That the Beneficiary is currently managing the property and is entitled to [an] annual fee of \$75,000 or 50% of the net profit, which ever [sic] is higher.

"d. If the annual fee cannot be paid then it will automatically be added to the principal amount of the note.

“e. If the Trustor becomes incompetent before the note can be paid then the note will automatically convert into a 50% ownership in the property.”

Stacey testified to preparing the modification agreement pursuant to Lonnie’s instructions. She further testified to reading the document to him prior to its execution. The trial court found the agreement “unfair,” devoid of consideration, incapable of being understood by Lonnie, and the product of undue influence.

The question of mental capacity is governed by sections 810–812. Section 810 establishes a rebuttable presumption of capacity to make decisions, and it states: “A person who has a mental or physical disorder may still be capable of contracting” (*Id.*, subds. (a), (b).) Therefore, a judicial determination of incapacity “should be based on evidence of a deficit in one or more of the person’s mental functions rather than on a diagnosis of a person’s mental or physical disorder.” (*Id.*, subd. (c).)

Section 811 provides that a person lacks capacity when there is a deficit in at least one identified mental function and “a correlation [exists] between the deficit or deficits and the decision or acts in question.” (*Id.*, subd. (a).) Qualifying impairments are listed under the categories of “Alertness and attention,” “Information processing,” “Thought processes,” and “Ability to modulate mood and affect.” (*Id.*, subd. (a)(1)–(4).) Examples include “Ability to attend and concentrate,” “Short- and long-term memory, including immediate recall,” “Ability to understand or communicate with others,” and “Severely disorganized thinking.” (*Id.*, subd. (a)(1)(C), (2)(A)–(B), (3)(A).) Qualifying deficits must significantly impair “the person’s ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.” (*Id.*, subd. (b).)

Pursuant to section 812, a person lacks capacity to make a decision unless they are able to understand and appreciate the “rights, duties, and responsibilities created by, or affected by the decision[;] [¶] (b) The probable consequences for the decisionmaker and,

where appropriate, the persons affected by the decision[;] [and] (c) [¶] The significant risks, benefits, and reasonable alternatives involved in the decision.” (*Id.*, subds. (a)–(c).)

Evidence of Lonnie’s lack of capacity goes beyond the diagnosis of dementia. The record is replete with proof of his memory problems, inability to read, and significant deficits with auditory comprehension. The transcript of his testimony in the Howard Porter trial on June 10, 2008, provides a snapshot of his cognitive abilities at that time. He was either malingering or having serious difficulty processing and retaining information. Given the expert testimony regarding his progressive decline, it is reasonable to infer his condition was worse 14 months later when he signed the Promissory Note Modification Agreement.

Attorney Jensen testified as follows regarding the period of 2005–2007: “I observed that there was a steady decline of [Lonnie’s] ability to read. There was a steady decline of his ability to formulate thought.” In January 2008, attorney Callahan told opposing counsel Lonnie had lost the ability to read. Six months later, in the Porter trial, Lonnie acknowledged the reading problem. Stacey testified to reading the Promissory Note Modification Agreement to him at some unspecified point before he signed it at Borton Petrini. Therefore, the evidence strongly suggests Lonnie did not read the document and could not have done so if he had tried.

In late 2005, Dr. Epperson documented Lonnie’s problems with auditory comprehension. He could understand “very simple material,” but was otherwise processing information at the level of a fourth grade student. In November 2009, approximately two months after he signed the subject agreement, Sue Walls took Lonnie to a speech pathologist. The speech pathology report, which Dr. Epperson discussed at trial, documents severe auditory comprehension problems. In Dr. Epperson’s words, “it indicates a progression to the point where, four years after I saw him, ... he’s only understanding one and a half out of ten items that he’s presented auditorily. [¶] So if

someone explained, for example, a legal document verbally, he would understand only a fraction of it.”

Based on the cited evidence and the record as a whole, it is reasonable to infer Lonnie did not read the Promissory Note Modification Agreement and, assuming it was read to him, was not capable of understanding its contents to make an informed decision. In other words, he lacked capacity to enter into the contract. Any doubts regarding the sufficiency of the evidence are dispelled by the testimony of Drs. Epperson and Omalu. Both experts opined Lonnie lacked the mental capacity to understand the 2009 will, which was signed on the same day and is arguably a less complex document. (E.g., *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1350–1351 [compared to the threshold for contractual capacity, there is “a significantly lower mental capacity standard for the making of a will”].) Given our conclusion, we need not analyze the trial court’s finding of undue influence.

I. Indemnity Agreement

In 2001, Lonnie and Stacey entered into an indemnity agreement relating to Stacey’s work as an “onsite project manager” for certain subdivisions then under construction. During trial, Stacey produced a version of the agreement that had allegedly been amended and executed in 2007. She relied on this document to justify her use of estate funds to pay for hundreds of thousands of dollars in attorney fees associated with the probate litigation.

Copies of the three-page agreement were marked as trial exhibits 2 and 441–1. In the bottom right corner of each page is a space designated for the initials of Lonnie, Stacey, and a witness (“Initials ___ / ___ / ___”), but these areas are blank. The pertinent terms are set forth on page 1:

“... Indemnifier [Lonnie] hereby expressly agrees to indemnify and hold harmless Indemnitee [Stacey], [her] successors or assigns against all suits, actions, claims, demands, or damages that arise from the following:

“All supervision work performed in all construction projects, real estate transaction coordination, office supervision of personnel, rental property management, agriculture operation supervision, banking relationships and transactions, title company relationships and transactions, all correspondence with attorneys on legal matters and all other course of business duties or responsibilities deemed by the parties to conduct the day to day business procedures by the Ashlock entities and or properties.”

The third page of the document is a stand-alone signature page. It contains the signatures of Lonnie, Stacey, and Sue Walls (the purported witness). The signature blocks appear on the left and right sides of the page as follows:

“INDEMNIFIER:

“

“Lonni Ashlock
“Sole Member of:

“Ashlock Ranches LLC
“Morningstar Homes LLC
“Willow Bend Homes LLC
“Tiger Creek Homes LLC

“**Amended in April 2003**
“Asset Protection LLC
“Central Valley Equities LLC

“**Amended in June 2003**
“Rock Solid Assets LLC
“Equity Protection LLC

“**Amended in January 2005**
“Majority General Partner in:
“Lonnie Ashlock Investments

“Witness:

“ _____ ”

INDEMNITEE:

Stacey Monaghan
Asset Manger [*sic*]

Amended in October 2007

Stacey Carlson
Asset Manager

Stacey testified the original agreement was prepared by an attorney and executed on February 28, 2001. She signed it as “Stacey Monaghan,” her married name at the time. The agreement was supposedly amended once, in light of her expanding responsibilities, and they added to the left side of the page all entities that had come into existence since 2001. On the right side of the page, Stacey added a new signature block to reflect her return to using her maiden name. Stacey admitted drafting the 2007 amendment, claiming to have used an electronic version provided by the attorney who prepared the original agreement.

Sue Walls denied the signature attributed to her was genuine. She also opined the signature attributed to Lonnie was not his own. Gabriel’s forensic document examiner opined Lonnie’s signature was authentic. The trial court found Lonnie and Sue signed the original agreement in 2001, but not the 2007 amendment. The statement of decision explains its findings:

“... Ms. Walls was cross-examined by Mr. Crabtree, and was asked to look at Ex. 16. She was asked if she had signed Ex. 16, and she said she had. The Court has examined both Exs. 2 and 16. What purports to be Ms. Walls’ signature on both looks very, very similar, like they were written by the same person. The issue for the Court is that the signatures on Ex. 441-1, which is represented to be the original of Ex. 2, do not appear to be ‘wet-ink’. They all appear to be in black ink, and appear to be photo copies. If that is the case, then all of the signatures were probably not made at the same time. Why would Stacey Carlson, in October of 2007, sign her name twice, first as ‘Stacey Monaghan’, then a second time as ‘Stacey Carlson’?

“What is more probable, is that this page was originally prepared in 2001, and was signed by Lonni Ashlock, Sue Walls, and Stacey Monaghan. The only entities listed were the four immediately beneath Lonni Ashlock’s signature. Then, in 2007, that original signature page was typed on again by Stacey Carlson, who then added the other ‘Amendments’ and entities, and she alone signed it again, this time as ‘Stacey Carlson’. Another factor supporting this scenario is that in the prior amendments, there was always a couple of additional entities. When Ms. Carlson signed in 2007, there were no additional entities listed. She said she signed it then because she

changed her name from Monaghan to Carlson. [Citation.] Finally, if the 2007 signature page was newly signed by the three individuals, where are the signature pages of the previous versions? Ms. Carlson is a very organized and thorough record keeper. She seemed to have kept virtually everything she ever signed. The Court was impressed by the extent of her documentation. But for this, the original page signed in 2001, with its signatures, was not produced. ‘Q. What happened to the original page that you say was signed on February 28, 2001? A. I don’t know’

“The Court finds that this is the sequence of events regarding the signature page of Ex. 2: that Lonni, Sue and Stacey (Monaghan) signed it in 2001, and Stacey (Carlson) alone signed it in 2007. That would not be effective to amend the agreement from the 2001 agreement. The Court disagrees that the 2001 agreement would justify the expenditure of attorney fees by Ms. Carlson after Lonni’s death, many years after the four entities had been terminated....”

“A document is not presumed to be what it purports to be” (*Fakhoury v. Magner* (1972) 25 Cal.App.3d 58, 65.) The trier of fact may disbelieve the testimony of any witness and may rely on circumstantial evidence. We again defer to the trial court’s credibility determinations and reasonable inferences drawn from the evidence. On the related issue, we agree with the trial court’s interpretation of the 2001 agreement. The contract pertains to the supervision of construction projects long since completed by 2013 and to specific business entities which, according to Stacey’s own testimony, had ceased to exist by 2007. She fails to show the agreement was intended to apply to the matters in question.

III. Admissibility of the Evidence

A. Expert Testimony of Barto

Stacey contends the trial court erred by permitting Nanette Barto to express opinions not previously disclosed in her deposition. The challenged testimony concerns signatures attributed to Lonnie on the Letter of Authorization and partnership documents. We conclude the trial court acted within its discretion.

1. Background¹¹

Gabriel's attorneys initially asked Barto to analyze seven documents. Using the letter Q as shorthand for "questioned document," Barto labeled these items "Q-1" through "Q-7." She was also provided records that were alleged to be known exemplars of Lonnie's signature, which she labeled as "K" documents. The "K" documents had been produced by Stacey as authentic exemplars.

Barto was deposed on October 22, 2014. Prior to that date, Barto began to suspect that not all of the exemplars were genuine. She redesignated certain "K" documents as "Q" documents, thus adding "Q-8" through "Q-32" to the latter category. Barto identified the expanded list of "Q" documents in her original report, which was produced on or before the deposition date, but the report only contained opinions regarding the authenticity of Q-1 through Q-7.

During her deposition, Barto reportedly told Stacey's counsel she had not yet formed opinions regarding Q-8 through Q-32 but planned to do so upon further analysis. In Gabriel's briefing below, which is included in the Respondent's Appendix, he quotes excerpts from the deposition transcript:

"Q. Okay. Have your [*sic*] formed any opinions yet with respect to K1 through K11?

"A. They have been provided to me as known exemplars but subsequent evidence has supported that there's a possibility some of those are not so I have to do an examination to determine whether or not they're authentic.

"Q. Okay. And you have not yet done that examination?

"A. I have not.

¹¹Stacey's claim is poorly developed in the briefing. The key facts are difficult to ascertain, and documents that might have given clarity to the issue are not part of the record, e.g., Barto's deposition transcript and her expert reports. Consequently, we must rely on Barto's testimony and the statements made by the parties' counsel during trial to summarize the factual background.

“Q. So you are not yet confident that they are all known exemplars?

“A. Exactly.”

Elsewhere in her deposition, Barto allegedly said, “I will be looking at each and every signature through Q section to determine whether or not they are forgeries or they’re authentic.” Stacey’s counsel acknowledged Barto’s intention to form additional opinions at a later point in time: “Other than what we’ve already discussed here today about the opinions you have expressed *and the future work that you intend to do*, is there anything else that you intend to do with respect to this case?” (Italics added.) She replied, “I believe there’s some more documents that might be coming; maybe, maybe not. But there might be additions to this actual file. I wouldn’t know until we get there.”

Barto’s trial testimony commenced on February 6, 2015. On the same date, she produced an updated report, which had apparently been completed the previous day. Stacey’s counsel objected to the report, complaining it contained opinions not previously disclosed in her deposition. The parties offered cursory background information, and the trial court said, “[L]et’s go ahead and proceed and see where we go and ... obviously at some point if [Stacey’s counsel feels the testimony is inadmissible], you can make your objection and I’ll rule on it.”

Among other testimony, Barto explained the Letter of Authorization (ex. 10) had been presented to her as a known exemplar of Lonnie’s signature. Accepting the representation as true, she labeled it “K-8.” She later determined K-8 contained Lonnie’s signature, but the signature had been cut and pasted from another document (ex. 284). She therefore concluded K-8 was a forgery, likely created using image editing software such as Adobe Photoshop.

At the end of Barto’s first day of testimony, the trial court urged Gabriel’s attorneys to make her available for a second deposition. They did so, but Stacey’s counsel declined the offer. He later explained, “[A second] deposition would do nothing

more than just have her tell me what the report said. ... It would have been a useless effort.”

When trial resumed a few days later, Stacey’s counsel objected to Barto expressing opinions “on anything other than Documents Q-1 through 7.” Oral argument followed, with the parties recounting most of the above-summarized background information. After considering the arguments, the trial court overruled the objection. Barto went on to provide opinion testimony regarding the Agreement To Consolidate Real Estate Holdings (Q-21) and the partnership agreements for Investwest Properties (Q-22) and Little Hills Ranch (Q-23).

Barto’s testimony concluded on February 13, 2015. Several months later, on June 3, 2015, Stacey moved to augment her expert witness list and designate a rebuttal handwriting expert. On September 11, 2015, the trial court denied the motion to augment. Four days later, Stacey’s counsel orally moved to strike Barto’s testimony. The motion to strike was denied.¹²

¹²Stacey references the motion to augment on pages 23 and 108 of her opening brief. These passing remarks do not preserve for appellate review any claims related to the denial of that motion. (*Paulus v. Bob Lynch Ford, Inc.*, *supra*, 139 Cal.App.4th at p. 685.)

The trial court described Stacey’s motion to strike as “almost identical” to her original objection to Barto testifying to matters outside of Q-1 through Q-7. While arguing the motion to strike, her counsel noted the denial of the motion to augment. The opening brief on appeal contains this heading at page 64: “It was Error for the Failure to Deny Stacey’s Motion to Strike Barto’s Testimony.” Two sentences follow: “This matter was brought to the attention of the court in the Declaration of Crabtree [in support of the Motion for New Trial] in section A9. Stacey made a Motion to Strike Barto’s Testimony which was denied.” To the extent the motion to strike entailed issues separate and apart from those in the initial objection to Barto’s testimony, any claim regarding such issues has been forfeited or waived. (Cal. Rules of Court, rule 8.204(a)(1)(B) [briefs must state each point under a separate heading or subheading “and support each point by argument and, if possible, by citation of authority”]; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”].)

2. *Standard of Review*

A trial court's decision to admit or exclude expert testimony is reviewed for abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) “““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) As a general rule, we may not reverse a discretionary ruling unless it can be characterized as “““arbitrary, capricious, or patently absurd.”” (*Id.* at p. 318.)

In arguing for heightened scrutiny, Stacey asks us to “carefully consider” *Staub v. Kiley* (2014) 226 Cal.App.4th 1437. The *Staub* opinion states, “[W]hen the exclusion of expert testimony rests on a matter of statutory interpretation, we undertake a de novo review.” (*Id.* at p. 1445.) There, the appellate court decided legal issues concerning the defendants’ standing to move to exclude the plaintiffs’ expert witnesses in light of the defendants’ own failure to comply with certain discovery statutes. (*Id.* at pp. 1445–1446.) If anything, *Staub* is relevant because it acknowledges that whether a party “unreasonably” failed to comply with the rules of discovery is ordinarily a matter of discretion. (*Id.* at pp. 1445, 1447.) Stacey’s claim does not require statutory interpretation or present other questions of law. Therefore, the challenged ruling is accorded deference under the abuse of discretion standard.

3. *Analysis*

Code of Civil Procedure sections 2034.210 through 2034.310 govern the exchange of expert witness information during discovery. Litigants are obligated, upon a properly tendered request, to disclose the substance of the opinions to which an expert will testify. (*Easterby v. Clark* (2009) 171 Cal.App.4th 772, 778.) “[T]he trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has

unreasonably failed to” comply with the procedural requirements for exchanging expert witness information. (Code Civ. Proc., § 2034.300, italics added.)

As noted in *Easterby v. Clark*, *supra*, 171 Cal.App.4th at pages 778–780, the issue of whether an expert’s trial testimony may differ from his or her deposition testimony has been addressed in cases such as *Bonds v. Roy* (1999) 20 Cal.4th 140, *Jones v. Moore* (2000) 80 Cal.App.4th 557, and *Kennemur v. State of California* (1982) 133 Cal.App.3d 907. “The overarching principle in *Kennemur*, *Jones*, and *Bonds* is clear: a party’s expert may not offer testimony at trial that exceeds the scope of his deposition testimony *if* the opposing party has no notice or expectation that the expert will offer the new testimony, or *if* notice of the new testimony comes at a time when deposing the expert is unreasonably difficult.” (*Easterby*, *supra*, at p. 780.) Another case cited by Stacey, *Dozier v. Shapiro* (2011) 199 Cal.App.4th 1509, generally stands for the same principle. (*Id.* at pp. 1518–1524.)

Stacey does not address the evidence of Barto informing her attorney that additional opinions were likely forthcoming pending further analysis of the “Q” documents. Moreover, the evidence before the trial court suggested the delay in arriving at those opinions was attributable to Stacey misrepresenting the authenticity of the “K” documents. “The behavior of the party seeking to exclude the expert testimony is relevant to the reasonableness inquiry. If any unfairness arising from the proffering party’s late or incomplete disclosure was exacerbated by the party seeking exclusion, the court is less likely to find the conduct of the party offering the expert to be unreasonable.” (*Boston v. Penny Lane Centers, Inc.* (2009) 170 Cal.App.4th 936, 954, see *id.* at p. 950.) Given the circumstances, the trial court did not abuse its discretion by allowing Barto to testify regarding her postdeposition opinions about the “Q” documents.

Were we to assume an abuse of discretion occurred, we would affirm for lack of prejudice. “Claims of evidentiary error under California law are reviewed for prejudice applying the ‘miscarriage of justice’ or ‘reasonably probable’ harmless error standard of

People v. Watson (1956) 46 Cal.2d 818, 836, that is embodied in article VI, section 13 of the California Constitution. Under the *Watson* harmless error standard, it is the burden of appellants to show that it is reasonably probable that they would have received a more favorable result at trial had the error not occurred.” (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 447.)

Stacey contends the admission of Barto’s testimony affected the trial court’s partnership findings. However, the trial court found Lonnie had lost the mental capacity to enter into contracts months before the partnership agreements were allegedly signed. Regarding the implied existence of a partnership based on the parties’ behavior, the trial court “relied heavily” on the testimony of Stacey’s accountant, Koftinow, calling it “some of the most important evidence in the case.” The trial court’s credibility determinations must also be factored into the analysis. In light of these circumstances, it is not reasonably probable the outcome would have been different but for the admission of Barto’s testimony.

B. Hearsay

Stacey alleges Barto and Drs. Epperson and Omalu “relied upon inadmissible hearsay” contrary to the holdings of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). With regard to Barto, the claim is based on her supposed reliance upon statements by attorney Broderick-Villa concerning whether Stacey had previously accused Sue Walls of signing Lonnie’s name on Ex. 16. (See pt. II.B, Partnership Findings, *ante*.) With regard to Drs. Epperson and Omalu, the claim is based on an 11-page timeline of events created by Broderick-Villa and introduced into evidence as trial exhibit 425.

Stacey misreads the *Sanchez* decision. The California Supreme Court emphasized, “Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so.” (*Sanchez, supra*, 63 Cal.4th at p. 685.) What *Sanchez*

prohibits is exposing the trier of fact to case-specific hearsay via expert testimony without independent proof of the matters asserted therein. (*Id.* at p. 686.)

The hearsay of which Stacey complains was introduced by her own counsel. Neither Barto nor Gabriel’s counsel attempted to argue Stacey had previously testified to the authorship of Lonnie’s signature on Ex. 16. The issue was raised by attorney Crabtree during his cross-examination of Barto. The same is true of the Broderick-Villa timeline. Crabtree actually moved to have the timeline admitted into evidence, and his request was granted. “It is axiomatic that a party who himself offers inadmissible evidence is estopped to assert error in regard thereto.” (*People v. Williams* (1988) 44 Cal.3d 883, 912.) Because the alleged *Sanchez* errors were attributable to Stacey, her claim fails. (Cf. *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1139 [invited error barred defendant’s evidentiary claim because defendant was the first party to elicit the challenged evidence].)

IV. Procedural Issues

A. Accountings

Stacey contends the trial court exceeded its authority by ordering multiple accountings before and during trial. We are not persuaded.

This case was originally assigned to the Honorable Hurl W. Johnson. In April 2014, following Judge Johnson’s retirement, the case was transferred to the Honorable Timothy W. Salter. On April 30, 2014, the parties appeared before Judge Salter for a hearing. The judge asked for an oral status report, and Gabriel’s counsel provided a factual overview, noting an ongoing dispute regarding Gabriel’s desire to inventory all personal property in the estate. Stacey’s counsel represented that “all the property is in the trust at this point,” i.e., the 2013 trusts.

At the same hearing, Gabriel’s counsel explained how Stacey had acted on Lonnie’s behalf under power of attorney for seven or eight years prior to his death.

Counsel thus requested “an accounting for that period.” The trial court began to respond, “That sounds reasonable” Stacey’s counsel interjected, “Well, I think it is,” but then he argued the request was premature. The trial court disagreed, saying, “You know, I think it would be advantageous to all parties and the Court to have an accounting before the date of trial.” Stacey was ordered to file an accounting by June 30, 2014, “on the action[s] she took under Durable Power of Attorney from 2005 until the date of death of Lonnie Ashlock.”

In its first tentative decision, filed June 11, 2015, the trial court explained what happened in response to its accounting order: “[Stacey] produced an Initial Accounting, and then filed an Amended Accounting. Upon review of the Accountings, the Court noted both mistakes and omissions. As just one example, no bank statements were provided with the Accountings.” Consequently, a further accounting was ordered. Stacey was instructed to account for not only the actions taken under power of attorney, but also “all activities/transactions taken pursuant to the ‘partnerships’ the Court has concluded are invalid.”

The trial court’s statement of decision notes Stacey’s repeated failure to produce a satisfactory accounting: “There have already been several amendments, and the accounting still does not balance.... [¶] ... [Stacey] has been given numerous opportunities to prepare an accounting that is correct, complete and which balances. She has not done so”

On appeal, Stacey claims the orders requiring her to account for actions taken outside her capacity as Lonnie’s attorney-in-fact were “not authorized by law.” She further contends “the court should not have ordered [her] to account at all without making a finding that would require such an account.” In support of the latter argument, she relies on *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573. However, *Union Bank* and the authorities cited therein involve causes of action for accountings in nonprobate cases.

Our analysis is guided by the discussion in *Christie v. Kimball* (2012) 202 Cal.App.4th 1407. “In probate court, nothing speaks more eloquently or provides more insight into factual and legal issues than an accounting.” (*Id.* at p. 1409.) “Where an accounting is necessary to determine the status of trust assets, the court may order one sua sponte. ‘The probate court has general power and duty to supervise the administration of trusts.’ [Citation.] This includes the “*inherent power* to decide all incidental issues necessary to carry out” this function. [Citation.] Section 17206 provides, in relevant part, ‘The court in its discretion may make *any orders and take any other action* necessary or proper to dispose of the matters presented by the petition’” (*Id.* at p. 1413.)

B. Objections to the Statement of Decision

Stacey’s opening brief contains this heading: “The Interim Judgment Should be Reversed due to Failure to make Findings on Material Issues.” (Boldface omitted.) What follows is 10 pages of subheadings and short arguments, most of which technically pertain to the trial court’s proposed statement of decision, not the one incorporated into the interim judgment. These claims are based on Code of Civil Procedure sections 632 and 634.

“When the court announces its tentative decision, a party may, under [Code of Civil Procedure] section 632, request the court to issue a statement of decision explaining the basis of its determination, and shall specify the issues on which the party is requesting the statement; following such a request, the party may make proposals relating to the contents of the statement. Thereafter, under [Code of Civil Procedure] section 634, the party must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party. The section declares that if omissions or ambiguities in the statement are timely brought to the trial court’s attention, the appellate court will not imply findings in favor of the prevailing party.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133, fns. omitted.)

Gabriel accurately summarizes the procedural history:

On June 11, 2015, the trial court issued a first tentative decision on trust issues. On August 27, 2015, the trial court suspended that decision, allowing Stacey to introduce additional evidence on trust issues. On July 28, 2016, the trial court issued its second tentative decision.

During a hearing on July 29, 2016, each party was served with a copy of the trial court's second tentative decision. Stacey orally requested a statement of decision, but neither that day nor during the 10-day period for doing so did Stacey specify any controverted issues to be addressed in the statement of decision.

On August 25, 2016, the trial court issued its proposed statement of decision and its proposed interim judgment. On October 3, 2016, Stacey filed objections to the proposed statement of decision, incorrectly titled "Objection to Statement of Decision." On October 18, 2016, the trial court issued its "Ruling on Objections to Statement of Decision," actually a ruling on Stacey's objections to the proposed statement of decision. On October 19, 2016, the trial court filed its statement of decision. On October 25, 2016, the trial court filed its interim judgment.

We pause here to address Stacey's claim that the trial court "Failed to Prepare a Statement of Decision on the First Tentative Decision," i.e., the Tentative Decision on Trust Issues filed June 11, 2015. The first tentative decision was ordered "suspended" due to the granting of Stacey's motion to reopen evidence on the trust petition. It was then superseded by the second tentative decision, which was filed July 28, 2016. Nevertheless, Stacey argues the failure to issue a statement of decision on the first tentative decision was reversible error.

Stacey relies on *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, which states, "a trial court's failure to issue a statement of decision when there has been a timely request therefor is per se reversible error." (*Id.* at p. 1127.) However, *Miramar Hotel* and cases with similar holdings have been overruled by *F.P. v. Monier* (2017) 3 Cal.5th 1099. The *Monier* opinion clarifies "that a trial court's error in

failing to issue a requested statement of decision is not reversible per se, but is subject to harmless error review.” (*Id.* at p. 1108.)

We perceive no error. Even assuming an error occurred, Stacey fails to demonstrate prejudice. Any error was plainly harmless given the trial court’s detailed proposed statement of decision issued on August 25, 2016, which was followed by the final statement of decision issued on October 19, 2016.

Returning to the main dispute, Gabriel correctly notes Stacey’s own failure to comply with Code of Civil Procedure section 632 and rule 3.1590 of the California Rules of Court (rule 3.1590). Any litigant who desires a statement of decision must request such a statement within 10 days after announcement or service of the preceding tentative decision. (Code Civ. Proc., § 632; rule 3.1590(d).) “The principal controverted issues must be specified in the request.” (Rule 3.1590(d); accord, Code Civ. Proc., § 632.) Stacey did not specify any “controverted issues” to be included in the trial court’s proposed statement of decision.

The proposed statement of decision was issued on August 25, 2016. Stacey was given an extension beyond the 15-day deadline (rule 3.1590(g)) to file objections. On October 3, 2016, she filed 107 enumerated objections to the proposed factual findings and 10 additional objections to proposed conclusions of law. The trial court ruled on these objections, rejecting most of them. On appeal, Stacey discusses 21 of the 107 fact-based objections. She contends each objection relates to the trial court’s failure to make findings on material issues.

The parties spend an inordinate amount of time bickering over Stacey’s noncompliance with the California Rules of Court, including rule 8.204(a)(1)(B), which impliedly prohibits the incorporation by reference of arguments set forth in external documents (*Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 290). We decline to resolve each of these debates. The 21 objections raised below and discussed with at least a minimal degree of substance in the opening brief will be

considered. We also address Stacey’s complaint regarding the judgment being partially in favor of Gabriel individually.¹³

1. “Objection 2”

Stacey argued the proposed statement of decision did not “completely explain the events” surrounding her attempt to disqualify the trial judge. On appeal, she argues this is “an absolutely crucial issue” because a question remains as to whether the judge should have been disqualified under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii). She is mistaken. The denial of a disqualification motion is reviewable only by means of a petition for a writ of mandate. (Code Civ. Proc., § 170.3, subd. (d).) No claims may be raised in this appeal regarding judicial disqualification rulings. (*Ibid.*; *Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 671–672.) Moreover, the objection does not concern a failure to make material findings of fact.

2. “Objection 24”

Stacey requested additional findings regarding an asset known as the “Arlington property.” On appeal, she contends “[t]his is crucial to the issue not only of the partnerships but an offset against the monetary judgment.” Stacey’s briefing neglects to explain the “crucial” connection to the trial court’s partnership findings. We can infer relevance as to the offset issue because, in the objection, she claims to have held a \$17,000 deed of trust secured by this property. However, the trial court expressly reserved jurisdiction to determine whether the asset was wrongfully taken by Stacey and

¹³All other issues are deemed forfeited or waived for insufficient development and/or lack of citations to evidence or authority. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785; e.g., Cal. Rules of Court, rule 8.204(a)(1)(C) [a brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”].) This includes a handful of issues referenced in single-sentence paragraphs on pages 54–55 of appellant’s opening brief wherein Stacey merely cites to “TAB-27” of the Appellant’s Opening Appendix. TAB-27 corresponds to an unsigned and undated 23-page proposed interim judgment.

conveyed to a third party. Since the issue was to be decided in a subsequent phase of the case, we see no basis for reversal.

3. “Objection 25”

Stacey requested the discussion of Nanette Barto’s opinions regarding the partnership documents to be stricken in light of Stacey’s theory of those opinions being tainted by attorney Broderick-Villa’s statements concerning Ex. 16. On appeal, she contends “a proper analysis would indicate that Barto did not conclude that [the partnership agreements] were not signed by Lonni.” We have rejected this argument on the merits elsewhere in the opinion. Furthermore, Stacey’s dissatisfaction with the trial court’s analysis does not mean the trial court erroneously failed to make findings on a material issue.

4. “Objection 26”

The statement of decision states, with regard to the partnership agreements, “The Court finds it unlikely that the documents were signed on February 1, 2009. Instead, the Court finds that they were prepared and signed by [Stacey] and [her father] much later, probably sometime after March 31, 2011” The same language appeared in the proposed statement of decision, and Stacey objected to it on grounds of insufficient evidence.

First, Stacey has not demonstrated a failure to make findings on a material issue. Second, regardless of whether substantial evidence supports the quoted finding, the finding is immaterial. If the partnership documents were forged, it does not matter if the forgery occurred on February 1, 2009, or a later point in time. “A failure to find or an erroneous finding upon immaterial matters is not prejudicial. [Citations.] ‘If a judgment is fully supported by and rests upon valid findings, it may not be set aside because not supported by other findings, which may be ignored as being immaterial.’” (*Chapman v. Associated Transit Term. Corp.* (1932) 123 Cal.App. 157, 161-162.)

5. “Objection 27”

With regard to the 2009 amendment to the 1993 trust, the statement of decision reads, “[Stacey] put in language designed to ‘disinherit’ Gabriel.” Stacey argues she merely copied language originally conceived by attorney Jensen in the unexecuted draft amendment from 2003. Similar to the previous objection, no failure to make material findings has been shown. The challenged finding is also immaterial. “A finding is immaterial where a contrary finding would not require the entry of a judgment different from the one actually rendered.” (*Draper v. Griffin* (1943) 61 Cal.App.2d 281, 286.) We have upheld the trial court’s invalidation of the 2009 trust amendment pursuant to the finding Lonnie did not sign it.

6. “Objection 40”

In this “objection,” Stacey asked the trial court to add these sentences to its statement of decision: “*Dr. Epperson’s conjecture regarding LONNI’s demeanor on September 2, 2009 should be compared to Dr. Foglar’s first-hand testimony of his conversation with LONNI on September 2, 2009. Dr. Foglar testified that he had a discussion with LONNI about which knee was going to be operated on, the nature of the surgery and LONNI responded appropriately. [Citation] It should be noted that Dr. Epperson did not read Dr. Foglar’s deposition and had no knowledge of Dr. Foglar’s interaction with LONNI in September 2009.*” (Italics added.)

Clearly, this is argument by Stacey concerning the weight of the evidence. “A court’s statement of decision need not respond to every point raised by a party or make an express finding of fact on each contested factual matter; it need only dispose of all basic issues and fairly disclose the court’s determination as to ultimate facts and material issues in the case.” (*Duarte Nursery, Inc. v. California Grape Rootstock Improvement Com.* (2015) 239 Cal.App.4th 1000, 1012.) No error has been shown.

7. “Objection 41”

This objection concerns the trial court’s allegedly irrelevant discussion of “events beginning June 20, 2010 and ending July 2012.” Stacey’s briefing repeats the objection in slightly different language. The inclusion of irrelevant matter in a statement of decision is not a ground for reversal. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 584.)

8. “Objection 42”

Stacey objected to the finding “that by 2004 or 2005, LONNI was cognitively impaired, and had developed CTE.” She maintains the finding “goes directly against the unrefuted testimony of Dr. Omalu that CTE can only be diagnosed by autopsy.” First, there is no failure to make findings on a material issue. Second, the challenged finding is supported by Dr. Omalu’s testimony.

Dr. Omalu was asked on cross-examination, “So are you saying that [Lonnie] had CTE?” He replied, “By 2004, yes, sir, it’s very definite in his medical records. [¶] ... [¶] ... By 2004, the damage was already done.” Dr. Omalu testified a “[d]efinitive diagnosis” of dementia can only be made by autopsy, “[b]ut diagnosis and believing with a reasonable degree of certainty can be done in living people.”

9. “Objection 51”

This “objection” is a variation of Objection 25, *ante*, and requests a finding that Lonnie signed the Agreement to Consolidate Real Estate Holdings notwithstanding Nanette Barto’s contrary opinion. We will not repeat our analysis of this issue.

10. “Objection 52”

In this objection, Stacey asked the trial court to delete the “entire section determining the 2013 trusts to be voidable rather than void *ab initio* ... since it is contrary to longstanding California law.” We have already explained why any error in finding the trusts voidable rather than void *ab initio* was harmless.

11. “Objection 58”

Stacey argued the trial court’s “discussion of the partnerships is incomplete and should be deleted.” This is another example of her disagreeing with the court’s analysis, not identifying a failure to make findings on a material issue. No error has been shown.

12. “Objection 59”

This objection concerned Lonnie’s gun collection, which, according to one document in the record, had an estimated value of \$20,000. Stacey claimed Lonnie gifted the collection to her son, Shawn Monaghan, in 2007. The trial court credited other evidence indicating Lonnie retained ownership of the guns but kept them locked away in Stacey’s home for legal reasons.

Once again, there is no failure to make findings on a material issue. Stacey argues, “The court’s conclusion ... ignores the fact that Lonni was convicted of a felony and could not legally own the gun collection.” The key word is “legally.” Lonnie’s continued ownership of the guns was not impossible, it was prohibited by the law. He had a documented history of breaking the law.

13. “Objection 66”

Stacey explains, “In this objection, [she] pointed out that the court neglected to discuss the testimony of people who saw Lonni at or about the time the [2009] Will was executed.” Her objection pertains to the issue of testamentary capacity. She does not identify a failure to make findings on a material issue. Moreover, we have affirmed the invalidation of the will on separate grounds, i.e., former section 21350.

14. “Objection 69”

Stacey objected to the trial court’s finding on the cohabitation issue under former section 21351 because “it [did] not take into consideration many of the factors that should have been included in the court’s analysis and some of the assumptions are not warranted by the evidence.” No failure to make findings on a material issue is alleged. We have

found substantial evidence in support of the challenged finding. Error has not been shown.

15. “Objection 72”

This objection concerns the trial court’s finding of undue influence in relation to the 2009 will. Stacey does not identify a failure to make findings on material issues. Instead, she challenges the evidence in support of a particular finding. We have affirmed the invalidation of the will on separate and distinct grounds.

16. “Objection 73”

The trial court noted “a propensity on the part of [Stacey] ... to exercise generosity with [Lonnie’s] assets.” It went on to reference “evidence of [Stacey] paying bills for Lawrence Ashlock and his wife, ... paying in excess of \$500,000 in attorney’s fees for herself, Lawrence and Teenya, ... entering into a water pump agreement which was very favorable to a nearby rancher, ‘selling’ parcels of real property on terms very favorable to buyers, and the sales and gifts of vehicles and guns.” The court then remarked, “While generosity is a commendable trait, it is only so when one is generous with her own assets.”

Stacey made a relevance objection to the quoted statements. Again, the inclusion of irrelevant matter in a statement of decision is not a ground for reversal. (See *Brewer v. Simpson*, *supra*, 53 Cal.2d at p. 584.)

17. “Objection 74”

This objection challenges the sufficiency of the evidence supporting the indemnity agreement findings. We have concluded those findings are supported by substantial evidence. Error has not been shown.

18. “Objection 78”

Stacey requested the following sentence be deleted and replaced with a finding in her favor: “The Court still has to decide whether she is entitled to the \$350,000.” The

issue concerns Stacey’s “attempt to ‘hide’” income from the Snelling Ranch after the trial court issued its first tentative decision. (See Pertinent Findings and Conclusions, *ante*.) The trial court reserved jurisdiction to determine issues of accounting and damages, which entailed questions of Stacey’s entitlement to monetary offsets. “A statement of decision need not address all the legal and factual issues raised by the parties. Instead, it need do no more than state the grounds upon which the judgment rests” (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124–1125.)

19. “Objection 94”

This objection is yet another variant of Objections 25 and 51, *ante*, regarding Nanette Barto’s opinion about the Agreement to Consolidate Real Estate Holdings. Stacey does not identify a failure to make findings on a material issue.

20. “Objection 107”

This “objection” reads, “It is suggested that the following additional finding[s] be included in the Statement of Decision” The proposed findings generally concern offset issues relating to monetary damages, i.e., subject matter reserved for subsequent phases of the litigation. Stacey fails to demonstrate grounds for reversal.

21. Judgment in Favor of Gabriel Individually

Stacey contends the interim judgment should only be in favor of Lonnie’s estate. She cites one case, *Lickter v. Lickter* (2010) 189 Cal.App.4th 712, which explains that a claim of elder/dependent abuse survives the victim’s death and may be prosecuted by the representative of his or her estate. (*Id.* at pp. 721–722.) However, Stacey is liable for costs and attorney fees under multiple statutes, including sections 859, 21380, subdivision (d), and 4231.5, subdivision (c).

A will contestant “naturally incur[s] a personal obligation to pay attorney fees to his or her *own* counsel. Absent agreement ..., there is no basis for charging the *estate* with a contestant’s fee liability—even if the contestant prevails in the lawsuit.” (Ross &

Cohen, Cal. Practice Guide: Probate (The Rutter Group 2018) § 15:74, pp. 15–28 to 15–29.) “[T]he probate court retains discretion to decide not only *whether* costs should be paid, but also, if they are awarded, who will pay and who [will] recover them.” (*Hollaway v. Edwards* (1998) 68 Cal.App.4th 94, 99, citing § 1002.) Since Gabriel retained counsel to contest the 2009 will and 2013 trusts, we are not convinced the trial court erred by designating him as an individual judgment creditor.

V. Alleged Judicial Bias

Statutory claims of judicial bias, including Stacey’s arguments regarding disqualification pursuant to Code of Civil Procedure section 170.1, “are relegated to writ review” as described in Code of Civil Procedure section 170.3, subdivision (d). (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 548.) Stacey’s claim is cognizable only to the extent it alleges a denial of her constitutional due process rights. (*Ibid.*; *People v. Panah* (2005) 35 Cal.4th 395, 445, fn. 16; *People v. Brown* (1993) 6 Cal.4th 322, 334–335.) Such allegations are reviewed on the basis of the entire record and with the presumption the trial court acted in good faith. (See *People v. Peoples* (2016) 62 Cal.4th 718, 788–789; *People v. Chatman* (2006) 38 Cal.4th 344, 363–364; Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”].)

“Bias or prejudice consists of a “mental attitude or disposition of the judge towards [or against] a party to the litigation....”” (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) Judicial bias is not established by examples of adverse rulings. (See *People v. Avila* (2009) 46 Cal.4th 680, 696.) It makes no difference whether the adverse rulings were valid or erroneous. (*Ibid.*)

“[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him in the trial of the action. It is his duty to consider and pass upon the evidence produced before him, and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party. The opinion

thus formed, being the result of a judicial hearing, does not amount to ... bias and prejudice” (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312; accord, Code Civ. Proc., § 170.2, subd. (b) [“It shall not be grounds for disqualification that the judge [¶] ... expressed a view on a legal or factual issue presented in the proceeding”].)

Stacey offers 11 examples of the trial court’s alleged bias under the following subheadings: (1) “Failure to issue a Statement of Decision on the first Tentative Ruling”; (2) “Excessive orders for Stacey to account”; (3) “Issuance of the First Tentative Decision deciding issues not fully tried”; (4) “Failure to accept disqualification”; (5) “Finding the 2013 Trusts voidable rather than void”; (6) “Disregard of virtually all of Stacey’s witnesses”; (7) “Failure to adequately address the argument concerning the Agreement to Consolidate Real Estate Holdings” [i.e., “The issue is that Broderick-Villa’s false information given to Barto caused her to reach an erroneous conclusion concerning the signature on [Ex. 13]”]; (8) “Failure to rule on Stacey’s offset issues”; (9) “Failure to coordinate the Interim Judgment to the Statement of Decision”; (10) “The court’s reference to Stacey’s ‘generosity’ ...”; and (11) “The court prematurely decided major issues before all the evidence was presented.” Under each subheading is a brief argument, typically one or two sentences in length, repeating positions asserted throughout the opening brief.

Viewed in light of the governing principles, Stacey’s complaints do not substantiate her claim of judicial bias. We have discussed her arguments in other parts of the opinion. Central to her claim is the assertion of error regarding the first tentative decision, which is why we summarized the procedural history in such detail.

To reiterate, the partnership issues were intertwined with the 2013 trust issues and appropriately litigated. The trial court’s initial cohabitation analysis was limited in scope to 2013 and was relevant to the section 21380 findings. The analysis of Lonnie’s cognitive abilities was relevant to Stacey’s partnership defense, and the trial court was not required to ignore the evidence because of its relevance to other issues.

With regard to the first tentative decision, the trial judge declared as follows: “I came in to my chambers every weekend for approximately two and a half months, to work on this case, and reach a decision. During this time, I reviewed over 100 pages of notes that I had taken during trial, as well as reading the vast majority of the more than 1,000 pages of the court reporters’ transcript of the testimony. In addition, I conducted a substantial amount of legal research.” Such facts would not cause a reasonable person to doubt whether the trial court was fair and impartial.

Based on a thorough review of the trial transcripts and the parties’ appendices, we reject the judicial bias claim. “When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons for ruling against a party constitutes evidence of judicial bias.” (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219.)

VI. Alleged Attorney Misconduct

In her final claim, Stacey seeks reversal based on alleged misconduct by Gabriel’s trial attorneys. Counsel is accused of “witness intimidation” and “providing false information” to expert witnesses. We need not decide the question of misconduct. Viewed individually and collectively, the alleged errors are harmless.

Misconduct by counsel is a procedural irregularity, which may be remedied by a new trial. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 870; Code Civ. Proc., § 657, subd. 1.) “Obviously[,] attorney misconduct is more common than *reversal* for attorney misconduct. Prejudice must be shown.” (*Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559, 568.)

“[A] reviewing court makes ‘an independent determination as to whether the error was prejudicial.’ [Citation.] It ‘must determine whether it is reasonably probable [that the appellant] would have achieved a more

favorable result in the absence of that portion of [attorney conduct] now challenged.’ [Citation.] It must examine ‘the entire case, including the evidence adduced ... in determining whether misconduct occurred and whether it was sufficiently egregious to cause prejudice.’ (*Garcia v. ConMed Corp.* (2012) 204 Cal.App.4th 144, 149.)

A. Witness Intimidation

Allegations of “witness intimidation” arose from a settlement offer extended to Teena Graham and Larry Ashlock. The proposal was made in open court on the first day of trial:

“[The] offer is that my client, Gabriel Ashlock, will waive the right to fees and attorneys’ fees and costs in this matter ... if their petition [for removal of Gabriel as estate administrator] is immediately dismissed with prejudice. [¶] I say that specifically because ... [i]f the will contest was successful by [Stacey], then they would still have a right to refile a petition for removal if they felt that [Gabriel] was not appropriately the administrator of the estate under the will [¶] But the pending matters that they have raised in their petition for removal need to be dismissed, simple as that. And the costs and fees in this [litigation] are very substantial at this point.”

Approximately one month later, attorney Ronald Sarhad threatened to move to disqualify Gabriel’s counsel for improper ex parte communications with Teena and/or Larry. The underlying incident occurred in the courtroom following adjournment for an evening recess. According to Teena, attorney Broderick-Villa told her “that if we did not withdraw our petition to become the administrators of Lonnie Ashlock’s Estate and to have Gabriel Ashlock removed as the current administrator, then we were going to owe \$46,000 and lose our homes.”

In the aftermath, Gabriel’s counsel sent a letter to Sarhad. The letter concluded with these statements: “[I]t has become obvious that we need to put a limitation on [the settlement] offer, and after consideration have decided that the offer will expire when either Teena, Lawrence or Gabriel are first called to testify. Please advise your clients of this cut-off.”

On day seven of trial, Stacey's counsel alleged the incident had prejudiced her because Larry and Teena were now afraid to testify. Counsel noted the above-quoted terms of Gabriel's settlement offer. The trial court expressed concern over the new contingency. In response, Gabriel's counsel rescinded the offer: "If it's troubling to the Court, then I'll state that the offer to Teena and to Lawrence is withdrawn at this point[,] so they don't have to worry about that. [¶] ... [¶] ... It's off the table. Withdrawn. They have had plenty of time to accept it and they haven't accepted it."

Larry Ashlock testified on day 33 and again on days 35–37. Teena testified on days 37–38 and again on day 40. Stacey alleges prejudice because they did not testify at an earlier point in time.

The accusation of witness intimidation is both serious and questionable. "All potential litigants must weigh costs of suit against likelihood of success and possible recovery before deciding to file suit. Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful, not those who did not make the choice." (*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 869.) Cost waiver settlements are legal and commonplace.

Regardless of any alleged misconduct, the theory of prejudice is hopelessly speculative. Gabriel's settlement offer was withdrawn on December 16, 2014, yet Larry was not called to testify until September 30, 2015. Teena did not testify until October 7, 2015. The nine-month interval is not explained. Therefore, a causal connection has not been shown. Moreover, it is conjectural for Stacey to suggest the case might have been decided differently had Larry or Teena testified earlier.

B. "Providing False Information"

The false information claim has two components. First, attorney Broderick-Villa is faulted for having "falsely informed" Nanette Barto "that Stacey had stated in her deposition that it was not Lonni's signature on Exhibit 16." The relevant background is

explained in our analysis of the partnership findings, *ante*. We have already rejected Stacey's theory of error and prejudice. The misconduct claim presumes Broderick-Villa intentionally lied to Barto, but the record is far from conclusive on that point. As mentioned in footnote 9, *ante*, Stacey acknowledged testifying about signatures on a document concerning the same subject matter as Ex. 16. It seems equally plausible there was an honest miscommunication, either in Broderick-Villa's representation or in Barto's understanding of what he told her. As such, neither misconduct nor prejudice has been shown.

The second allegation concerns Broderick-Villa's "timeline." The 11-page document is an overview of events beginning with Lonnie's birth in 1950 and continuing through the start of trial on November 13, 2014. Gabriel's counsel provided copies of this document to their experts, Drs. Epperson and Omalu.

At trial, Stacey argued the timeline "cherry-picked all the negative and left out the positive." On appeal, she complains it is subjective and contains "falsehood[s]." Her opening brief identifies only two alleged inaccuracies: "the assertion that one of the witnesses to the [2009] Will did not even realize it was a Will [citation] and that at a December 2010 dinner, Lonni didn't recognize his ex-wife [citation], a fact which was specifically relied upon by Dr. Omalu, but never proven."

The referenced witness to the 2009 will was attorney Callahan. The disputed statement refers to his deposition testimony, which is not part of the record. We have no way of knowing whether the statement is true or false. Callahan's trial testimony indicates he only saw Lonnie sign the last page of the will and did not read the document. We note these details in the interest of explaining Stacey's position, but her argument is a proverbial red herring. Whether Callahan knew Lonnie was signing a will or some other document is immaterial.

Stacey fails to explain the relevance of any misconception by the medical experts regarding Callahan's involvement as a percipient witness. Her arguments quickly

devolve into a criticism of the experts' testimony based on their alleged ignorance of evidence favorable to her case. Drs. Epperson and Omalu were cross-examined on the matters of which Stacey complains, including the statement regarding Lonnie's ex-wife and other parts of the timeline. Her arguments fall well short of demonstrating prejudice.

Lastly, under the heading of "Providing False Information," there are two miscellaneous subheadings: "An attempt to link Stacey to Doug Porter" and "Continual disparagement of Stacey." These sections generally (and briefly) complain of efforts by Gabriel's counsel to attack Stacey's character. By this point in our discussion, it should be clear the trial court's assessment of her credibility was based on a wide range of evidence. The statement of decision notes she "testified, not counting the accounting issues, on 23 different days—some partial days, and others full days." This is followed by a list of circumstances and events "that reflect badly on her credibility," none of which are attributable to alleged misconduct by Gabriel's attorneys. Again, we find no grounds for reversal.

DISPOSITION

The judgment is affirmed. Respondent shall recover all costs on appeal.

PEÑA, Acting P.J.

WE CONCUR:

SMITH, J.

DESANTOS, J.